

**AGENDA**  
**City of Aztec**  
**COMMISSION WORKSHOP**  
**November 17, 2015**  
**201 W Chaco, City Hall**  
**5:00 pm to 6:00 pm**

**5:00-6:00**

**A. Review Commission Policies**

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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.

**A G E N D A**  
**CITY OF AZTEC**  
**CITY COMMISSION MEETING**  
**November 17, 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 County Historical Society-Zang Wood

**VII. CITIZEN RECOGNITION**

**VIII. EMPLOYEE RECOGNITION**

**IX. CONSENT AGENDA**

- A. Commission Workshop Meeting Minutes, October 27, 2015
- B. Commission Meeting Minutes, October 27, 2015
- C. Travel Requests
- D. Resolution 2015-972 Surplus
- E. Resolution 2015-973 NMDOT Control No. C5150949 East Aztec Arterial Funding Agreement
- F. Resolution 2015-974 Regular Municipal Election Resolution of March 1, 2016
- G. Bid 2016-538 Aerial Lift-Bucket Truck
- H. Resolution 2015-975 NMDOT Control No. C5142088 East Aztec Arterial Funding Agreement
- I. Intergovernmental Agreement With San Juan County for Detention Center Services Amendment Seven
- J. Bid 2016-0526 S. Church Ave Reconstruction (Paving) Change Order #1 (Final)
- K. FAA Revenue Use Letter
- L. Resolution 2015-976 Application to BLM for Surface ROW for East Aztec Arterial
- M. Resolution 2015-977 Application to BLM for Waterline ROW for East Aztec Arterial

*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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**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 2015-447 Amending Chapter 17, Section 17-3 Safety Policy
- B. Final Adoption of Ordinance 2015-448 Amending Chapter 17, Section 17-1 Personnel Policy
- C. Intent to Adopt Ordinance 2015-449 Amending Section 16-15 Golf Course Fees

**XIII. LAND USE HEARING**

- A. 2015 Mankin Land Group-New Drill Site Permit

**IV. 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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CITY OF AZTEC  
COMMISSION WORKSHOP MINUTES  
October 27, 2015

**I. CALL TO ORDER**

Mayor Burbridge called the meeting in to order at 5:30pm at the Aztec City Commission Room City hall 201 W. Chaco, Aztec NM.

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

MEMBERS ABSENT: None

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

**A. Discussion on Camera Devices-City Buildings**

Mayor Burbridge opened the workshop for discussion on camera devices in City buildings. Josh mentioned that this was brought up by a discussion between him and Commissioner McClure. Commissioner McClure mentioned that she has a concern on the audio recording on the system at City Hall. Josh handed out a legal opinion from Larry Thrower on video and audio surveillance systems and signage. Josh mentioned that the City currently has 5 departments that are equipped with video and audio surveillance systems. Larry mentioned that video surveillance systems are ok to have in buildings and can be a sense of security. He mentioned that in his research he has not revealed any strict legal requirement for the posting of signs notifying the public that video cameras are in use in the buildings but seems to be a good idea from the public standpoint. He mentioned that as a policy he would recommend the use of cameras only for safety. However he does not recommend the use of audio surveillance systems that record in public buildings because they could violate federal and state privacy laws and may incur both civil and criminal liability. The decision tonight is that the City will disable the audio on City surveillance systems in City buildings.

**II. Adjournment**

Mayor Burbridge adjourned the Workshop at 5:59 pm.

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Mayor, Sally Burbridge

ATTEST:

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Karla Sayler, City Clerk

MINUTES PREPARED BY:

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Karla Sayler, City Clerk

DRAFT

CITY OF AZTEC  
COMMISSION MEETING MINUTES  
October 27, 2015

**I. CALL TO ORDER**

Mayor Burbridge called the Meeting to order at 6:03pm at the Aztec City Commission Room, City Hall, 201 W. Chaco, Aztec, NM.

**II. INVOCATION**

The Invocation was led by City Attorney Larry Thrower

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by IT Director Wallace Begay

**IV. ROLL CALL**

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

Members Absent: None

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

**V. AGENDA APPROVAL**

MOVED by Mayor Pro Tem Sipe, SECONDED by Commissioner Locke to Approve the Agenda as Presented

**VI. CITIZEN RECOGNITION**

None

**VII. EMPLOYEE RECOGNITION**

None

**VIII. CONSENT AGENDA**

MOVED by Commissioner Locke, SECONDED by Mayor Pro-Tem Sipe to Approve the Consent Agenda as presented with the exception of items (E and F)

- A. Commission Meeting Minutes, October 17, 2015
- B. Travel Requests
- C. Resolution 2015-971 Surplus
- D. Library Advisory Board Approval
- E. (PULLED) Russell Planning & Engineering, Change Order #3
- F. (PULLED) Bid 2015-0445 S Church Avenue Improvements- Change Order #3

## **IX. ITEMS FROM CONSENT AGENDA**

### **E. Russell Planning & Engineering, Change Order #2**

Mayor Burbridge asked for clarification on the redesign of the size and widths of the sidewalks for continuity. Bill Watson, Public Works Director mentioned that they will be 8 feet. Commissioner Locke asked for an overview of the change order. Drew Chandler, Russell Engineering reviewed the change order with the changes and amendments.

MOVED by Mayor Pro Tem Sipe, SECONDED by Commissioner Rogers to Approve Russell Planning & Engineering, Change Order #3 in the amount of \$20,707.45.

All Voted Aye; Motion Passed Five to Zero

### **F. Bid 2015-0445 S. Church Avenue Improvements-Change Order #2**

Mayor Pro Tem Sipe questioned the travel costs for Contractor on this project. Josh reviewed the summary that Bill Watson submitted in agenda packet.

MOVED by Mayor Pro Tem Sipe, SECONDED by Commissioner McClure to Approve Bid 2015-0445 S. Church Avenue Improvements-Change Order #2 in the amount of \$11,577.66 plus gross receipts tax.

All Voted Aye; Motion Passed Five to Zero

## **X. CITIZENS INPUT**

None

## **XI. BUSINESS ITEMS**

### **A. Approval of OP-ED Piece For Albuquerque Journal**

Commissioner McClure commented on the regulations that are coming that will reduce New Mexico's oil and natural gas production that will lead to a loss of billions of dollars to New Mexico and the federal government over the next two decades. She

mentioned that she does not have a problem with the changes but her concern is the welfare of our citizens. Greg Bloom, Greg Bloom Consulting and Oil And Gas Association mentioned that the BLM must and can carefully balance environmental protection and royalty issues with revenue and job concerns and want to ensure that the BLM gets these new regulations right. As residents of northwest New Mexico they want to keep our environment healthy for our families and future generations.

MOVED by Commissioner Rogers, SECONDED by Mayor Pro Tem Sipe to Approve OP-ED Piece for Albuquerque Journal

Motioned Passed; Four Aye Votes-One Nay Vote

## **XII. LAND USE HEARINGS**

None

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

Josh mentioned that November is “No Shave Month” for men’s health. He mentioned that the Halloween potluck will be Thursday in the Commission room and noon and the Chamber’s Business after hours will be hosted at the Aztec Golf Course and the topic will be Complete Streets by MPO on Thursday evening. Josh mentioned that the City is collecting food for ECHO food drive at City offices and mentioned the ribbon cutting ceremony for Arterial Phase 2 project on Monday November 2<sup>nd</sup> at 11:00am and will be meeting at the North side of Pepsi Way for anybody that would like to attend. Josh mentioned that we will reschedule the meetings in November and December to one meeting on November 17<sup>th</sup> and one meeting on December 15<sup>th</sup>.

Mayor Burbridge mentioned that she will be attending the National League of Cities Conference in Nashville, TN next week. Mayor Burbridge mentioned that we will schedule a workshop on November 17<sup>th</sup> to review Commission Policies.

Mayor Pro-Tem Sipe reported that she attended the North West New Mexico Senior meeting and EDAB meeting and mentioned that she attended the Aztec Clean and Strong meeting on Monday, October 19<sup>th</sup> at the Church of Christ at 6:30 pm. Mayor Pro Tem Sipe also mentioned that she attended the Get Pinked Soirée on Saturday night.

Commissioner Rogers mentioned that she attended the San Juan Safe Communities meeting and the topic was Law Enforcement and Mental Health Issues. She mentioned that she attended the Get Pinked Soiree.

Commissioner Locke thanked Commissioner Rogers for being on the board for Get Pinked Foundation. She mentioned that the library appointed a new member to the Library board and mentioned that they have started handing out forms for the Aztec Sparkles lighting contest.

Commissioner McClure mentioned that she attended the Lodgers Tax Board meeting and attended the ECHO Board meeting and they were given a third temporary contract.

#### **XIV. DEPARTMENT REPORTS**

Chief Mike Heal mentioned that he visited Lydia Rippey and Park Avenue for Red Ribbon for “Say No To Drugs” today to get the message out. He mentioned that Safe Treats will be Friday night on Main Street and mentioned that they will not have Chief’s Coffee until Spring.

Kate Skinner, Library Director mentioned that the Library will also have safe treats. She mentioned that the Library will be collecting food for ECHO and can go towards Library fines.

#### **XV. ADJOURNMENT**

Moved by Mayor Burbridge, SECONDED by Mayor Pro-Tem Sipe to adjourn the meeting at 7:00 pm.

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Sally Burbridge, Mayor

ATTEST:

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Karla Saylor, City Clerk

MINUTES PREPARED BY:

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Karla Saylor, City Clerk

# Staff Summary Report

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**MEETING DATE:** November 17, 2016  
**AGENDA ITEM:** IX. CONSENT AGENDA (C)  
**AGENDA TITLE:** Travel Requests

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**ACTION REQUESTED BY:** Administration and General Service  
**ACTION REQUESTED:** Approval of Employee/Public Official Travel Requests  
**SUMMARY BY:** 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.
- 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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**SUPPORT DOCUMENTS:** Travel Log November 17, 2015

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**DEPARTMENT'S RECOMMENDED MOTION:** Approve Employee/Public Official Travel Requests

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**EMPLOYEE/PUBLIC OFFICIAL TRAVEL REQUESTS FOR COMMISSION APPROVAL  
MEETING DATE: NOVEMBER 17, 2015**

Dates of Travel	Department	Employee	Purpose of Travel/Location	Over-night	Out of State	Costs	Explanation of Cost	FY16 Budget Available
12/02-04/15	Admin	Larry Thrower	NMML Attorney's Association Winter Meeting & Seminar Albuquerque, NM.	Yes	No	96.00 175.00 204.96 201.00	Meal & Gratuity Allowance Registration Mile/Rate Reimbursement Lodging- Hotel Albuquerque	Yes
12/07-10/15	General Service	Jeff Blackburn	Rocky Mountain Regional Turf Grass Conference Denver, CO.	Yes	Yes	198.60 275.00 115.00 368.70	Meal & Gratuity Allowance Registration Estimated Cost of Fuel Lodging	Yes

# Staff Summary Report

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<b>MEETING DATE:</b>	November 17, 2015
<b>AGENDA ITEM:</b>	IX. CONSENT (D)
<b>AGENDA TITLE:</b>	Resolution 2015-972 Surplus

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<b>ACTION REQUESTED BY:</b>	Public Works Department
<b>ACTION REQUESTED:</b>	Approval
<b>SUMMARY BY:</b>	Kathy Lamb, Amanda Williams

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## PROJECT DESCRIPTION / FACTS

- Public Works Department has identified items no longer necessary to daily operations (see attached list).
- The Public Works Department is requesting to submit the items for public auction through the Public Surplus website.
- If the items are not sold they will be donated or disposed of according to Statute Section 3-54-2 and Procurement Statute 13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

## FISCAL INPUT / FINANCE DEPARTMENT

- Revenues from auction to be applied to General Fund / Joint Utility Fund

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<b>SUPPORT DOCUMENTS:</b>	Resolution 2015-972 Surplus List
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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2015-972 Declaring Certain Municipal Property Not Essential For Municipal Purpose and Directing It Be Sold or Disposed.

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# CITY OF AZTEC RESOLUTION 2015-972

**A RESOLUTION DECLARING CERTAIN MUNICIPAL PROPERTY NOT ESSENTIAL FOR MUNICIPAL PURPOSE AND DIRECTING IT BE SOLD, OR IF THE PROPERTY HAS NO VALUE, DONATE THE PROPERTY TO ANY ORGANIZATION DESCRIBED IN SECTION 501(c)3 OF THE INTERNAL REVENUE CODE OF 1986 OR DISPOSED.**

**WHEREAS**, Sections 3-54-2 and 13-6-1 of NMSA, 1978 Compilation authorizes municipalities to sell personal property which is not essential for a municipal purpose or if the property has no value, donate the property to any organization described in Section 501(c)3 of the Internal Revenue Code of 1986; and

**WHEREAS**, the City of Aztec owns certain personal property which is obsolete and/or surplus and no longer needed or useful to the City; and

**WHEREAS**, the Governing Body wishes to declare this property not essential for a municipal purpose so that it can be sold or donated according to statute.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY** of the City of Aztec, New Mexico that the personal property below described which is owned by the City is surplus and not essential for a municipal purpose.

PASSED, APPROVED AND SIGNED this 17th day of November, 2015.

\_\_\_\_\_  
MAYOR SALLY BURBRIDGE

ATTEST:

\_\_\_\_\_  
CITY CLERK KARLA SAYLER

CITY OF AZTEC  
SURPLUS LIST  
RESOLUTION 2015-972

Department	Item/Model	Condition	Reason for Surplus	Location
Public Works	<p style="text-align: center;">Stahl Utility Bed Single Wheel</p> 	Good	Unnecessary	
Public Works	<p style="text-align: center;">Concrete Saw Diamond Core Cut CC 1300 Serial #1299058</p> 	Engine Needs Work	No Longer Needed	Public Works Facility
Public Works	<p style="text-align: center;">Concrete Saw CC1800XL Serial#13673 Unit#010-009</p> 	Engine Needs Work	No Longer Needed	Public Works Facility

**CITY OF AZTEC  
SURPLUS LIST  
RESOLUTION 2015-972**

Department	Item/Model	Condition	Reason for Surplus	Location
Public Wroks	<p style="text-align: center;">Concrete Saw Target Port-A-Cut IV Serial#000006435052</p> 	Gear Box Needs Work	No Longer Needed	Public Works Facility
Public Works	<p style="text-align: center;">Jet Hydraulic Press Model:HP-15 Serial#331415</p> 	Good	Not Needed	Public Works Facility
Public Works	<p style="text-align: center;">Lighht Weight Tamper Model:BT 60-4 Serial#101 540 36 9007</p> 	Engine Needs Work	No Longer Needed	Public Works Facility

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (E)  
**AGENDA TITLE:** Resolution 2015-973 NMDOT Control No. C5150949 East Aztec Arterial Funding Agreement

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**ACTION REQUESTED BY:** Approval of Resolution and Agreement  
**ACTION REQUESTED:** Finance Department  
**SUMMARY BY:** Kathy Lamb

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## **PROJECT DESCRIPTION / FACTS**

- The 2015 New Mexico Legislative Special Session, June 2015, approved the Capital Outlay Bill which included \$1,500,000 for the East Aztec Arterial.
- NM Department of Transportation (NMDOT) will administer the funding for the capital appropriation. The funding agreement requires approval by the City Commission and a Support Resolution.
- Funding will be utilized for the construction of Phase 1B and Phase 2.
- Funding expires June 30, 2019.

## **PROCUREMENT / PURCHASING**

- Not Applicable to this item.

## **FISCAL INPUT / FINANCE DEPARTMENT**

- The FY16 Annual Adopted Budget included the capital appropriation funding.

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**SUPPORT DOCUMENTS:** NMDOT Fund 89200 Capital Appropriation Project Agreement  
Resolution 2015-973

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2015-973 and NMDOT Fund 89200 Capital Appropriation Project Control No. C5150949

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**CITY OF AZTEC  
Resolution 2015-973**

**A Resolution Defining Project Scope and Support For Funding Through The New  
Mexico Department of Transportation for the East Aztec Arterial, Project Control No. C5150949**

**WHEREAS**, the City of Aztec has been appropriated funding through the New Mexico Department of Transportation, Capital Appropriation, Laws of 2015 SB1, Chapter 3, Section 33, Sub Section 54; and

**WHEREAS**, the New Mexico Department of Transportation (NM DOT) will administer these funds and has assigned this project the Control Number C5150949; and

**WHEREAS**, the funding appropriated is in the amount of \$1,500,000; and

**WHEREAS**, the City of Aztec may utilize the funds for construction of the East Aztec Arterial in Aztec, San Juan County; and

**WHEREAS**, the City of Aztec agrees to assume responsibility for the scope of this project; and

**WHEREAS**, the project shall be owned by the City of Aztec and will assume liability for the roadway, as well as the responsibility for the maintenance of the roadway; and

**WHEREAS**, the City of Aztec recognizes this funding expires June 30, 2019; and

**WHEREAS**, the City of Aztec FY2016 Adopted Annual Budget includes funding for this project; and

**NOW, THEREFORE**, be it resolved that the Aztec City Commission adopts this Resolution as formal acceptance of the funding for Control Number C5150949 through the New Mexico Department of Transportation.

**ADOPTED AND APPROVED** this 17<sup>th</sup> day of November 2015.

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Mayor Sally Burbridge

ATTEST:

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City Clerk Karla Sayler

Contract Number: \_\_\_\_\_

Vendor Number: 0000054308

Control Number: C5150949

**STATE OF NEW MEXICO  
DEPARTMENT OF TRANSPORTATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of Transportation, P.O. Box 1149, Room 126, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department" and 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 2015, SB1, Chapter 3, 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**, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

**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:

DFA Appropriation ID 15-0949 NMDOT Control Number C5150949 \$1,500,000 APPROPRIATION  
REVERSION DATE: 6/30/2019

Laws of 2015 SB1, Chapter 3, Section 33, Sub Section 54, One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000) to construct the east Aztec arterial route in Aztec in San Juan county.

The Grantee's total reimbursements shall not exceed the appropriation amount One Million Five Hundred Thousand Dollars and No Cents \$1,500,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, , \$0.00, which equals One Million Five Hundred Thousand Dollars and No Cents \$1,500,000 (the "Adjusted Appropriation Amount").

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.

<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.

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.” “Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. 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 entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity 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 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.

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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.

- 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 3.
- 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: Kathy Lamb  
Title: Finance Director  
Address: 201 W. Chac St., Aztec, New Mexico 87410  
Email: klamb@aztecnm.gov  
Telephone: 505-334-7653

Department: Department of Transportation District 5 Office  
Name: Susan Godina  
Title: Local Government Road Fund Coordinator  
Address: P.O. Box 4127, Santa Fe, NM 87502  
Email: Susan.Godina@state.nm.us  
Telephone: 505-995-7787  
FAX: 505-827-9509

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 6/30/2019 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: deauthorization, 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 Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic 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 Periodic Report format or content.

The Paper Periodic 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 Periodic 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, whichever 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 periodic 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, whichever 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 2. 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 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, 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 subawards, including subcontracts, loans and cooperative agreements. All subrecipients 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 DFA 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 of Transportation 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 a Department of Transportation Grant Agreement. Should the Department of Transportation 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 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 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

**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE  
DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

*Cynthia A. Christ*  
By: Cynthia Christ

Its: Assistant General Counsel

*10-23-15*  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
PAPER PERIODIC/FINAL REPORT  
EXHIBIT 1**

PERIODIC REPORT     FINAL REPORT

Grantee: \_\_\_\_\_

Project Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

1. Please provide a detailed status of project referenced above.

**A. Third Party Obligations**

Purchase Order or Contract # \_\_\_\_\_

Name of Contractor or Vendor: \_\_\_\_\_

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

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

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

**B. Project Phase**

Bonds Sold  Plan/Design  Bid Documents  Construction   
(provide anticipated date of commencement and completion for each phase)

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

Total Amount of all Notices of Obligation to Reimburse: \_\_\_\_\_

Total Grant Amount Expended by Grantee to Date: \_\_\_\_\_

Grant Balance as of this Date: \_\_\_\_\_

Amount of Other Unexpended Funding Sources: \_\_\_\_\_

**PERIODIC REPORT**

I hereby certify that the aforementioned Capital Grant 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 Grant 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.

\_\_\_\_\_  
Grantee Representative/Title

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 2**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
 B. Address: \_\_\_\_\_  
Complete Mailing, including Suite, if applicable  
 \_\_\_\_\_  
City State Zip  
 C. Phone No: \_\_\_\_\_  
 D. Grant No: \_\_\_\_\_  
 E. Project Title: \_\_\_\_\_  
 F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Grant Amount: \_\_\_\_\_  
 B. AIPP Amount (If Applicable) \_\_\_\_\_  
 C. Funds Requested to Date: \_\_\_\_\_  
 D. Amount Requested this Payment: \_\_\_\_\_  
 E. Grant Balance:                     \$0.00  
 F.  GF  GOB  STB (attach wire if 1st draw)  
 G. Payment Request No. \_\_\_\_\_

**III. Fiscal Year Expenditure Period Ending:**  
(check one)

(Jan-Jun)  Fiscal  
 (Jul-Dec)  Year

**IV. 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, and are valid expenditures or actual receipts; 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**

**Grantee Representative**

Printed Name \_\_\_\_\_  
 Date: \_\_\_\_\_

Printed Name \_\_\_\_\_  
 Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

**(Department Use Only)**

Vendor Code: \_\_\_\_\_  
 Loc No.: \_\_\_\_\_

Fund No.: \_\_\_\_\_

Division Fiscal Officer	Date
I certify that the Grantee financial and vendor file information agree with the above submitted information.	

Division Project Manager	Date
I certify that the Grantee records and related appropriation laws agree with the above submitted information.	

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 3**

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

**TO:**           **Grantee Representative:** \_\_\_\_\_

**FROM:**       **Department Representative:** \_\_\_\_\_

**SUBJECT:**    **Notice of Obligation to Reimburse Grantee**

**Project Number:** \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number C5150949 entered into between Grantee and 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 Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

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: \_\_\_\_\_

## **Attachment A**

### **The City of Aztec shall agree to comply with the following Provisions:**

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

### **The City of Aztec shall agree to comply with the following Lighting and Signal Provisions as applicable:**

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.

6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

# Staff Summary Report

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**MEETING DATE:** November 17, 2015

**AGENDA ITEM:** IX. CONSENT AGENDA (F)

**AGENDA TITLE:** Resolution 2015-974, Regular Municipal Election of March 4, 2014

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**ACTION REQUESTED BY:** Karla Sayler

**ACTION REQUESTED:** Approval of Resolution 2015-974

**SUMMARY BY:** Karla Sayler

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**FACTS:**

- As mandated by State Statute, a resolution in both English and Spanish calling for a regular election must be adopted.
- The next Regular Municipal Election will be held on Tuesday, March 1, 2016 in the Aztec City Commission Room, 201 W. Chaco
- The attached resolution describes pertinent information related to the election.

(more election information will be provided as we go through the process)

**ALTERNATIVES:** None

**FISCAL IMPACT:** Cost for the Election will run approximately \$4,000.00 to \$5,000.00 which has already been approved in this years budget

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**SUPPORT DOCUMENTS:** Resolution 2015-974 (English and Spanish)

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**DEPARTMENT'S RECOMMENDED MOTION:** **MOVE to Approve** Resolution 2015-974, Regular Municipal Election of March 1, 2016

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City of Aztec  
Resolution #2015-974

2016 REGULAR MUNICIPAL ELECTION RESOLUTION

Be it resolved by the governing body of the City of Aztec of San Juan County, New Mexico that:

- A. A regular municipal election for the election of municipal officers shall be held on March 1, 2016. Polls will open at 7:00 A.M. and close at 7:00 P.M.
- B. At the regular municipal election, persons shall be elected to fill the following elective offices:
  - 1. District # 1: One Commissioner for a four year term.
  - 2. District # 3: One Commissioner for a four year term.
  - 3. One Municipal Judge for a four year term.
- C. All precincts are consolidated for the regular municipal election.
- D. The following location is designated as polling places for the conduct of the regular municipal election. All voters shall vote at:

Aztec City Hall  
201 W. Chaco  
Aztec, NM 87410

- E. Absentee Voting. Applications for absentee ballots may be obtained only from the office of the Municipal Clerk. All applications for an absentee ballot must be completed and accepted by the Municipal Clerk prior to 5:00 p.m., February 26, 2016. After 5:00 p.m. on February 26, 2016, all unused absentee ballots will be publicly destroyed by the Municipal Clerk. The Municipal Clerk will accept completed absentee ballots delivered by mail, or in person by the voter casting the absentee ballot, by a member of the voter's immediate family, or by the caregiver to the voter until 7:00 p.m. on March 1, 2016.

Absentee ballots may be marked in person in the office of the Municipal Clerk during the regular hours and days of business, beginning on Tuesday, January 26, and closing at 5:00 p.m. on Friday, February 26, 2016.

- F. Early Voting. Early voting on paper ballots on Dominion Image Cast Evolution (ICE) machines will be conducted in the office of the Municipal Clerk during the regular hours and days of business, beginning on Wednesday, February 10, 2016 and closing at 5:00 p.m. on Friday, February 26, 2016.

- G. Persons desiring to register to vote at the regular municipal election must register with the County Clerk of San Juan County not later than Tuesday, February 2, 2016 at 5:00 P.M., the date on which the County Clerk will close registration books.
- H. All Declarations of Candidacy shall be filed with the Municipal Clerk on Tuesday, January 5, 2016 between the hours of 8:00 A.M. and 5:00 P.M.
- I. The casting of votes by qualified municipal electors shall be recorded on paper ballots to be counted by Dominion Image Cast Evolution (ICE) machines.

Adopted and approved this 17<sup>th</sup> day of November, 2015

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Mayor, Sally Burbridge

Attest:

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Karla H. Saylor, City Clerk

cc: County Clerk  
Secretary of State

RESOLUCIÓN de ELECCIÓN MUNICIPAL REGULAR del año 2016

CIUDAD DE AZTEC

Resolución #2015-974

Sea resuelto por el cuerpo gobernante de la ciudad del Aztec del condado de San Juan, New Mexico que:

- A. Una elección municipal regular para la elección de oficiales municipales será celebrada el primer día de marzo de 2016. Lugares de votación estarán abiertas al público entre las horas de las 7:00 A.M. y las 7:00 P.M.
- B. En la elección municipal regular, individuos serán elegidos para ocupar los siguientes cargos electivos:
  - 1. Distrito #1: Un comisionado por un término de cuatro años.
  - 2. Distrito #3: Un comisionado por un término de cuatro años.
  - 3. Un Juez Municipal par un término de cuatro años
- C. Todos los recintos son consolidados para la elección municipal regular.
- D. La siguiente localidad es designada como el local para votar par llevar a cabo la elección municipal regular. Los votantes en todos los recintos votarán en:

Aztec City Hall  
201 W. Chaco  
Aztec, NM 87410

- E. Votación en ausencia. Solicitudes para obtener balotas para votar en ausencia pueden ser obtenidas únicamente de la oficina de la Escribana Municipal. Todas las solicitudes para obtener balotas para botar en ausencia tienen que ser completados y aceptados por la Escribana Municipal antes de las 5:00 P.M., 26 de Febrero de 2016. A partir de las 5:00 P.M. el 26 de Febrero de 2016, la escribana de la municipalidad públicamente destruirá todas las balotas no utilizadas. La Escribana Municipal aceptará las balotas completadas por la (el) votante que emite su balota, con el fin de votar en ausencia, que se le entregue por correo, o en persona, de un miembro de la familia inmediata de la (del) votante, o del conserje al votante hasta las 7:00 P.M. el primer día de Marzo de 2016.

Las balotas para votar en ausencia se pueden marcar en persona en la oficina de la Escribana Municipal durante las horas y los días hábiles, empezando el martes, 26 de enero de 2016 y terminando a las 5:00 P.M. el viernes, 26 de febrero de 2016.

- F. Votación por Anticipado. El recuento de los votos por anticipado, de papeleta, se llevará a cabo por un Dominion Image Cast Evolution (ICE) en la oficina de la Escribana Municipal durante las horas y los días hábiles, comenzando el miércoles 10 de febrero de 2016 y terminando a las 5:00 P.M. el viernes, 26 de febrero de 2016.

- G. Las personas que deseen registrarse para votar en la elección municipal regular, tienen que registrarse con la Escribana del condado de San Juan a más tarde el martes, 2 de febrero de 2016 a las 5:00 P.M., la fecha en que la Escribana del condado cerrará los libros del registro.
- H. Se archivarán todas las Declaraciones de Candidatura con la Escribana Municipal el martes, 5 de enero de 2016 entre las horas de las 8:00 A.M. y las 5:00 P.M.
- I. Se hará un record de los votos de los electores municipales calificados en papeletas, de las cuales se hará un recuento Dominion Image Cast Evolution (ICE).

Adoptada y aprobada este día 17 de noviembre de 2015.

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Alcalde Sally Burbridge

Da fe:

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Karla H. Saylor, Escribana Municipal

Cc: Escribana del Condado  
Secretaria del Estado

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (G)  
**AGENDA TITLE:** Bid 2016-538 Insulated Aerial Lift-Bucket Truck

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**ACTION REQUESTED BY:** Finance Department, Electric Department  
**ACTION REQUESTED:** Approval  
**SUMMARY BY:** Kathy Lamb, Ken George

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## **PROJECT DESCRIPTION / FACTS**

- Replace 1997 GMC Teco Bucket Truck (003-006) which serves as a secondary or backup bucket truck. The 1997 GMC bucket truck is no longer considered safe by the Lineman who operate it. The truck has served us well for almost 20 years. It is time to retire the truck purchasing something new that is safer and has better features allowing the Lineman to do their work safer and more effectively.
- Specifications for the new bucket truck (insulated high voltage working platform) were developed to allow more versatility of the equipment in neighborhoods, highway, and undeveloped areas. The new bucket truck will become the primary use truck and unit 003-019 (2006 International Versalift bucket truck) will become the secondary aerial lift for the lineman.
- Current plans are to surplus and sell the 1997 GMC Bucket Truck.

## **PROCUREMENT / PURCHASING**

- Invitation to Bid (ITB) was published on the City website and advertised in the TALON on Friday, September 25, 2015 and Daily Times on Sunday, September 27, 2015. The bid was publically opened on Thursday, October 15, 2015.
- Four responsive bids were received.
- The Electric Director has reviewed the bids and recommends award to MISCO Municipal & Industrial Supply Co. in the amount of \$138,669.00. Anticipated delivery is 150 days after order is received.

## **FISCAL INPUT / FINANCE DEPARTMENT**

- FY16 Annual Adopted Budget, Joint Utility Fund, Electric Department, includes \$215,000 specific to the purchase of this equipment.

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**SUPPORT DOCUMENTS:** Bid Tabulation

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the award of Bid 2016-538 Insulated Aerial Lift-Bucket Truck to MISCO Municipal & Industrial Supply Co in the amount of \$138,669.00.

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**BID 2016-538**  
**INSULATED AERIAL LIFT-BUCKET TRUCK**  
**BID OPEN: OCTOBER 15, 2015**  
**AWARD RECOMMENDATION: MISCO MUNICIPAL & INDUSTRIAL SUPPLY CO**  
**TENTATIVE AWARD DATE: NOVEMBER 17, 2015**

ITEM	ITEM Description	UNIT	QUANTITY	CASECO TRUCK BODY	DON CHALMERS FORD	DUR-A-LIFT	MISCO
				TOTAL BID	TOTAL BID	TOTAL BID	TOTAL BID
1	Insulated Aerial Lift/Bucket Truck	EA	1	\$ 142,865.00	\$ 154,916.00	\$ 141,599.00	\$ 138,669.00
Total Bid Comparison Including 5% NM State Preference					\$ 147,170.20		
Total Bid Comparison Including up to 10% Resident Veteran Preference							

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (H)  
**AGENDA TITLE:** Resolution 2015-975 NMDOT Control No. C5142088 East Aztec Arterial Funding Agreement

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**ACTION REQUESTED BY:** Approval of Resolution and Agreement  
**ACTION REQUESTED:** Finance Department  
**SUMMARY BY:** Kathy Lamb

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## **PROJECT DESCRIPTION / FACTS**

- The 2014 New Mexico Legislative Session approved the Capital Outlay HB55 which included \$3,819,775 for the East Aztec Arterial. Prior to 2015 Legislative Special Session, June 2015, \$1,000,000 of the 2014 appropriation was requested to complete the necessary funding required for Phase 1B.
- NM Department of Transportation (NMDOT) will administer the funding for the capital appropriation. The funding agreement requires approval by the City Commission and a Support Resolution.
- Funding will be utilized for the construction of Phase 1B and Phase 2.
- Funding expires June 30, 2018.

## **PROCUREMENT / PURCHASING**

- Not Applicable to this item.

## **FISCAL INPUT / FINANCE DEPARTMENT**

- The FY16 Annual Adopted Budget included the capital appropriation funding.

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**SUPPORT DOCUMENTS:** NMDOT Fund 89200 Capital Appropriation Project Agreement  
Resolution 2015-975

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2015-975 and NMDOT Fund 89200 Capital Appropriation Project Control No. C5142088

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**CITY OF AZTEC**  
**Resolution 2015-975**

**A Resolution Defining Project Scope and Support For Funding Through The New Mexico Department of Transportation for the East Aztec Arterial, Project Control No. C5142088**

**WHEREAS**, the City of Aztec has been appropriated funding through the New Mexico Department of Transportation, Capital Appropriation, Laws of 2014 HB55, Chapter 66, Section 25, Sub Section 63; and

**WHEREAS**, the New Mexico Department of Transportation (NM DOT) will administer these funds and has assigned this project the Control Number C5142088; and

**WHEREAS**, the funding appropriated is in the amount of \$1,000,000; and

**WHEREAS**, the City of Aztec may utilize the funds for construction of the East Aztec Arterial in Aztec, San Juan County; and

**WHEREAS**, the City of Aztec agrees to assume responsibility for the scope of this project; and

**WHEREAS**, the project shall be owned by the City of Aztec and will assume liability for the roadway, as well as the responsibility for the maintenance of the roadway; and

**WHEREAS**, the City of Aztec recognizes this funding expires June 30, 2018; and

**WHEREAS**, the City of Aztec FY2016 Adopted Annual Budget includes funding for this project; and

**NOW, THEREFORE**, be it resolved that the Aztec City Commission adopts this Resolution as formal acceptance of the funding for Control Number C5142088 through the New Mexico Department of Transportation.

**ADOPTED AND APPROVED** this 17<sup>th</sup> day of November 2015.

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Mayor Sally Burbridge

ATTEST:

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City Clerk Karla Sayler

**Contract Number:** \_\_\_\_\_

**Vendor Number:** 0000054308

**Control Number:** C5142088

**STATE OF NEW MEXICO  
DEPARTMENT OF TRANSPORTATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of Transportation, P.O. Box 1149, Room 126, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department" and 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, HB55, Chapter 66, 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**, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

**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:

DFA Appropriation ID 14-2088 NMDOT Control Number C5142088 \$1,000,000 APPROPRIATION  
REVERSION DATE: 6/30/2018

Laws of 2014 HB55, Chapter 66, Section 25, Sub Section 63, One Million Dollars and No Cents (\$1,000,000) to construct the east Aztec arterial route in Aztec in San Juan county.

The Grantee's total reimbursements shall not exceed the appropriation amount One Million Dollars and No Cents \$1,000,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, , \$0.00, which equals One Million Dollars and No Cents \$1,000,000 (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 dollar (\$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." "Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. 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 entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity 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 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

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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.

(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 3.
- 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: Kathy Lamb  
Title: Finance Director  
Address: 201 W. Chac St., Aztec, New Mexico 87410  
Email: klamb@aztecnm.gov  
Telephone: 505-334-7653

Department: Department of Transportation District 5 Office  
Name: Susan Godina  
Title: Local Government Road Fund Coordinator  
Address: P.O. Box 4127, Santa Fe, NM 87502

Email: [Susan.Godina@state.nm.us](mailto:Susan.Godina@state.nm.us)  
Telephone: 505-995-7787  
FAX: 505-827-9509

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 6/30/2018 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: deauthorization, 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 Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic 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 Periodic Report format or content.

The Paper Periodic 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 Periodic 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, whichever 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 periodic 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, whichever 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 2. 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 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, 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

subawards, including subcontracts, loans and cooperative agreements. All subrecipients 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 DFA 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 of Transportation 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 a Department of Transportation Grant Agreement. Should the Department of Transportation 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 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 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

**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

*Cynthia A. Christ*  
By: Cynthia Christ

Its: Assistant General Counsel

*11-2-15*  
Date



**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
PAPER PERIODIC/FINAL REPORT  
EXHIBIT 1**

PERIODIC REPORT     FINAL REPORT

Grantee: \_\_\_\_\_

Project Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

1. Please provide a detailed status of project referenced above.

**A. Third Party Obligations**

Purchase Order or Contract # \_\_\_\_\_

Name of Contractor or Vendor: \_\_\_\_\_

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

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

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

**B. Project Phase**

Bonds Sold  Plan/Design  Bid Documents  Construction   
(provide anticipated date of commencement and completion for each phase)

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

Total Amount of all Notices of Obligation to Reimburse: \_\_\_\_\_

Total Grant Amount Expended by Grantee to Date: \_\_\_\_\_

Grant Balance as of this Date: \_\_\_\_\_

Amount of Other Unexpended Funding Sources: \_\_\_\_\_

**PERIODIC REPORT**

I hereby certify that the aforementioned Capital Grant 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 Grant 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.

\_\_\_\_\_  
Grantee Representative/Title

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 2**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
 B. Address: \_\_\_\_\_  
Complete Mailing, including Suite, if applicable  
 City State Zip  
 C. Phone No: \_\_\_\_\_  
 D. Grant No: \_\_\_\_\_  
 E. Project Title: \_\_\_\_\_  
 F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Grant Amount: \_\_\_\_\_  
 B. AIPP Amount (If Applicable) \_\_\_\_\_  
 C. Funds Requested to Date: \_\_\_\_\_  
 D. Amount Requested this Payment: \_\_\_\_\_  
 E. Grant Balance: \$0.00  
 F.  GF  GOB  STB (attach wire if 1st draw)  
 G. Payment Request No. \_\_\_\_\_

**III. Fiscal Year Expenditure Period Ending:**  
(check one)

(Jan-Jun)  Fiscal  
 (Jul-Dec)  Year

**IV. 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, and are valid expenditures or actual receipts; 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**

**Grantee Representative**

Printed Name \_\_\_\_\_  
 Date: \_\_\_\_\_

Printed Name \_\_\_\_\_  
 Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

**(Department Use Only)**

Vendor Code: \_\_\_\_\_  
 Loc No.: \_\_\_\_\_

Fund No.: \_\_\_\_\_

Division Fiscal Officer	Date
I certify that the Grantee financial and vendor file information agree with the above submitted information.	

Division Project Manager	Date
I certify that the Grantee records and related appropriation laws agree with the above submitted information.	

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 3**

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

TO: Grantee Representative: \_\_\_\_\_

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

SUBJECT: Notice of Obligation to Reimburse Grantee

Project Number: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number C5142088 entered into between Grantee and 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 Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

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: \_\_\_\_\_

## **Attachment A**

### **The City of Aztec shall agree to comply with the following Provisions:**

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

### **The City of Aztec shall agree to comply with the following Lighting and Signal Provisions as applicable:**

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.

6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.



**NEW MEXICO** DEPARTMENT OF  
**TRANSPORTATION**

November 2, 2015

Ms. Kathy Lamb  
Finance Director  
City of Aztec  
201 W. Chac St.  
Aztec, New Mexico 87410

**RE: Agreement for CN C5142088, Appropriation ID 14-2088**

Dear Ms. Lamb:

Enclosed for your coordination of signatures are three originals of the Severance Tax Agreement. **Please return them to the District Capital Coordinator.** DO NOT fill in the date on the first page of the enclosed Agreements. An original will be mailed to you at the time they are fully executed. The Agreement contains the standard terms and conditions required by DFA to ensure proper accounting of capital funds to include the reporting requirements listed in Article VIII. The City should review the terms and conditions listed in the Agreement carefully to ensure compliance.

The Department of Finance and Administration is working to improve the management of capital appropriations granted to and administered by local entities. As part of this process, **DFA is requiring monthly electronic reporting using the Capital Project Monitoring System (CPMS).** The City can access CPMS at the following web site <http://cpms.dfa.state.nm.us/Login.aspx>. The City will need to log in as a local entity and report the status on all of the City's open General Fund and Severance Tax projects. The City of Aztec should contact Jimmy Rodriguez with DFA, State Budget Division Capital Outlay Bureau at (505) 827-3884 or e-mail [JimmyN.Rodriguez@state.nm.us](mailto:JimmyN.Rodriguez@state.nm.us) to obtain a user id and password.

If you have any questions concerning the Agreement or if I can be of further assistance, please contact me at 505-476-3784.

Sincerely,

Sean Sandoval  
T/LPA /Capital Outlay Program Manager  
Project Oversight Division

Concur:

District Capital Coordinator

**Susana Martinez**  
Governor

**Tom Church**  
Cabinet Secretary

**Commissioners**

**Ronald Schmeits**  
Chairman  
District 4

**Dr. Kenneth White**  
Secretary  
District 1

**David Sepich**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Butch Mathews**  
Commissioner  
District 5

**Jackson Gibson**  
Commissioner  
District 6

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (I)  
**AGENDA TITLE:** Intergovernmental Agreement with San Juan County for Detention Center Services, Amendment Seven

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**ACTION REQUESTED BY:** City Manager  
**ACTION REQUESTED:** Approve the Intergovernmental Agreement with San Juan County for Detention Center Services, Amendment Seven  
**SUMMARY BY:** Sherlynn Morgan

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## **PROJECT DESCRIPTION / FACTS**

All other provisions from the 2007 agreement remain in effect

The county has submitted a seventh amendment to the Detention Center Services agreement executed in 2007

While the agreement provides that an annual adjustment to the per diem rate may occur

This agreement increases the per diem rate from \$60.66 to \$65.14. The increase will be effective July 1, 2016 – June 30, 2017

## **PROCUREMENT / PURCHASING**

Does not apply.

## **FISCAL INPUT / FINANCE DEPARTMENT**

The FY17 Annual Budget will be adjusted for this increase (7.4%) and may impact the transfer from General Fund to the Corrections Fund. The transfer is necessary as correction fees assessed to defendants do not fully fund the detention center costs. The FY16 Adopted Annual Budget currently includes \$30,000 to supplement the correction fees collected.

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**SUPPORT DOCUMENTS:** Intergovernmental Agreement with San Juan County for Detention Center Services, Amendment Seven

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Intergovernmental Agreement with San Juan Country for Detention Center Services, Amendment Seven

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**SEVENTH AMENDMENT TO  
INTERGOVERNMENTAL AGREEMENT  
DETENTION CENTER SERVICES**

**THIS SEVENTH AMENDMENT** to the Intergovernmental Agreement for Detention Center Services by and between San Juan County, New Mexico, hereinafter referred to as "The County", and the City of Aztec, New Mexico, hereinafter referred to as "the City."

**WHEREAS**, the Intergovernmental Agreement for Detention Center Services made and entered into the 17<sup>th</sup> day of July, 2007, requires that the County provide to the City, on or before October 15<sup>th</sup> of each year, the *per diem* rate for the County Detention Center to be effective July 1 of the succeeding calendar year; and

**WHEREAS**, the Sixth Amendment to the Intergovernmental established the *per diem* rate at \$60.66.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Paragraph D. of the July 17, 2007, Intergovernmental Agreement for Detention Center Services shall be amended to read as follows:

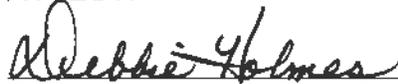
The parties agree that the City Prisoner Day rate shall be \$65.14, applicable from July 1, 2016, through June 30, 2017.

2. All other provisions of the Agreement including prior amendments other than those establishing the *per diem* rate shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals by their duly authorized officers, agents or representatives.

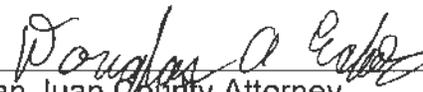
**BOARD OF COUNTY COMMISSIONERS OF  
SAN JUAN COUNTY, NEW MEXICO**

ATTEST:

  
Debbie Holmes, County Clerk

By:   
Keith Johns, Chairman  
Date: 11/3/15

**APPROVED AS TO FORM:**

  
San Juan County Attorney

**CITY OF AZTEC, NEW MEXICO**

ATTEST:

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

By: \_\_\_\_\_  
Sally Burbridge, Mayor

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Aztec City Attorney

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (J)  
**AGENDA TITLE:** Bid 2016-0526 S Church Ave Reconstruction (Paving)  
Change Order #1 (Final)

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**ACTION REQUESTED BY:** Public Works, Finance  
**ACTION REQUESTED:** Approval of Change Order  
**SUMMARY BY:** Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- The Commission awarded Bid 2016-0526 S Church Ave Reconstruction (Paving) to Oldcastle SW Group on August 25, 2015. The City completed removal of the old asphalt the week of October 26 and Oldcastle began work the same week.
- Oldcastle SW Group completed work the week of November 2 and has submitted billing to the City for the work completed. Public Works has inspected and accepted the project as complete and concurs with the quantities invoiced.
- The bid awarded was based on estimated quantities to be used on the project and actual quantities may result in an increase or decrease to the bid amount. In this situation, actual quantities used were less than estimated quantities resulting in reduced costs to the City.
- Change Order #1 (Final) is the adjustment of estimated quantities to actual, with an overall reduction of \$22,804.65.

## PROCUREMENT / PURCHASING

- Invitation to Bid (ITB) was published on the city website and advertised in the Daily Times, August 2, 2015. A mandatory prebid was conducted on August 10, 2015 and attended by one contractor. The bid was publically opened on August 18, 2015 with the one bid received. Base bid was awarded, August 25, 2015, to Oldcastle SW Group Inc. in the amount of \$106,037.

§ Awarded Bid:	\$106,037.00
§ Change Order #1 (Final):	\$(22,804.65)
§ Final Amount:	\$ 83,232.35
- Project was completed within 14 calendar days as required by the executed construction agreement.

**FISCAL INPUT / FINANCE DEPARTMENT**

- Funds not required for this project will be retained in Municipal Road Fund for future projects in the fiscal year.
- Total project costs for S Church Ave Reconstruction (sidewalks, drainage & paving) \$198,474.39.

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**SUPPORT DOCUMENTS:** Change Order #1 Final

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Bid #2016-0526, Change Order #1, reducing the contract amount to Oldcastle SW Group Inc. to \$83,2323.35 plus GRT.

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**CITY OF AZTEC  
CONTRACT CHANGE ORDER**

Change Order Requested by (OWNER – CONTRACTOR) \_\_\_\_\_

PROJECT: \_\_\_\_\_

CHANGE ORDER NO. \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

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

ADDRESS: \_\_\_\_\_

PURCHASE ORDER NO. \_\_\_\_\_

OWNER: CITY OF AZTEC

ADDRESS: City of Aztec 201 West Chaco, Aztec, New Mexico 87410

**REVISED CONTRACT AMOUNT**

1. Original Contract Amount ..... \$ \_\_\_\_\_

2. Total Contract Amount Including Previously Approved Change Orders  
(increase and/or deductions)(Including Tax) ..... \$ \_\_\_\_\_

3. Amount of This Order (Estimated) or (Firm) (Including Tax) ..... \$ \_\_\_\_\_

4. Total Revised Contract Amount to Date (Including Tax) ..... \$ \_\_\_\_\_

5. Monetary Basis of Change Order

A. Unit Bid Price ..... \$ \_\_\_\_\_

B. Cost Plus \_\_\_\_\_% ..... \$ \_\_\_\_\_

(Percentage to be filled in by OWNER)

6. Original Contract Completion Date ..... \_\_\_\_\_ calendar days from notice to proceed

7. New Completion Date Due to this Change Order \_\_\_\_\_ calendar days from notice to proceed

(Note: Items 2-5 Incl., to be filled in only if Change Order involves a monetary change.)

**REASONS FOR CHANGE ORDER INCLUDING ESTIMATED OR FIRM COST BREAKDOWN**  
(See attached sheets \_\_\_\_\_ to \_\_\_\_\_).

The work covered by this order shall be performed under the same terms and conditions as that included in original contract.

**CHANGE ORDER ACCEPTED AND APPROVED.**

BY \_\_\_\_\_

DATE \_\_\_\_\_

CONTRACTOR

**CHANGE ORDER RECOMMENDED**

BY \_\_\_\_\_

DATE \_\_\_\_\_

ENGINEER

CHANGE ORDER APPROVED BY CITY OF AZTEC OWNER ON _____  BY: _____ TITLE: _____
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**Change Order #1 (Final)**  
 Bid 2016-0526  
 300 Block S Church Street Reconstruction  
 Opened August 18, 2015 1:30 PM  
 Award : Oldcastle SW Group, Inc.  
 Commission Meeting: Tuesday, August 25, 2015

ITEM	DESCRIPTION	UNIT	QUANTITY	ORIGINAL CONTRACT		CHANGE ORDER #1 (FINAL)		AMENDED CONTRACT	
				UNIT COST	TOTAL	UNITS	TOTAL	UNITS	TOTAL
1	Type 1 Base Course	CY	368	\$ 85.00	\$ 31,280.00	(188.29)	\$ (16,004.65)	179.71	\$ 15,275.35
2	Road Base Preparation	SY	2630	\$ 3.20	\$ 8,416.00	-	\$ -	2,630.00	\$ 8,416.00
3	3" Hot Mix Asphalt, SP-IV	SY	2670	\$ 22.30	\$ 59,541.00	-	\$ -	2,670.00	\$ 59,541.00
4	Traffic Control	LS	1	\$ 6,800.00	\$ 6,800.00	(1.00)	\$ (6,800.00)	-	\$ -
<b>TOTAL CONTRACT</b>					\$ 106,037.00	<b>TOTAL</b>	\$ (22,804.65)	<b>ADJ TOTAL</b>	\$ 83,232.35

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (K)  
**AGENDA TITLE:** FAA Revenue Use Letter

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

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## PROJECT DESCRIPTION / FACTS

- The State of New Mexico is not in compliance with FAA Policy Amendment, 49 USC 47133: Restriction on use of revenues. In general, taxes collected from the sale of aviation fuel must be used for capital or operating expenses of the local airport system where the fuel is sold. This Policy Amendment calls on the states and the local communities to take efforts to ensure that those taxes are applied to aviation.
- This letter serves as the Municipalities requirement to urge the State to take whatever action is necessary to address these compliance issues, ensure compliance with federal requirements, and appropriately advise the FAA.
- The State must submit an action plan by December 8, 2015 to initiate the process to amend any non-compliant State laws on the use of aviation fuel tax revenues. Failure to comply may result in civil penalties or other sanctions and may also delay or preclude federal grant funding.

## PROCUREMENT / PURCHASING (if applicable)

- Not Applicable

## FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

- Delay or loss of federal funding for the Airport would seriously delay necessary improvements.

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**SUPPORT DOCUMENTS:**

1. State Tax Compliance Letter (from City)
2. Federal Register: 14 CFR Chapter 1, Use of Airport Revenues: Proceeds from Taxes on Aviation Fuel
3. NASAO Fuel Tax Issue Questions

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve FAA Revenue Use Letter to Submit to NMTRD.

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*Mayor*  
Sally Burbridge

*Mayor Pro-Tem*  
Sherri A. Sipe



*Commissioners*  
Roberta S. Locke  
Katee McClure  
Sheri L. Rogers

*A desirable place to live, work and play; rich in history and small town values!*

November 17, 2015

Demesia Padilla, Cabinet Secretary  
New Mexico Taxation & Revenue Department  
P.O. Box 630  
Santa Fe, NM 87504-0630

**Re: Federal Aviation Administration Policy Regarding Use of Aviation Fuel Tax Revenue and Deadline to Submit Action Plan by December 8, 2015.**

Dear Secretary Padilla:

I am the Mayor of the City of Aztec, which operates the N19 Aztec Municipal Airport. I am writing to alert you to federal compliance restrictions on the use of State and local tax revenues derived from the sale of aviation fuel, and a deadline for State officials to submit an action plan to address compliance by December 8, 2015.

### **Federal Revenue Use Policy**

As an airport sponsor/operator that has accepted federal grant assistance, the City of Aztec is bound by multiple federal policies, procedures, and legal requirements, including federal assurances made by the City of Aztec to the Federal Aviation Administration ("FAA") when accepting federal grants. Federal law on the subject of the use of airport revenue is embodied in the Policy and Procedures Concerning the Use of Airport Revenue (the "Revenue Use Policy"), first promulgated by the FAA in February, 1999, at 64 Fed. Reg. 7696. Under federal law, airport revenues generally may only be used for airport-related purposes.

These airport revenue use requirements apply to proceeds from certain State and local government taxes on aviation fuel, as well as to revenues received directly by an airport operator. A recent "Policy Amendment," issued by the FAA on November 7, 2014, is published at 79 Fed. Reg. 66282, and specifically concerns the use of the proceeds from any State or local tax on aviation fuel. The Policy Amendment requires that the City of Aztec inform you of its provisions, and take reasonable actions within the power of the City of Aztec to influence the State to conform to those requirements. I have included a copy of the Policy Amendment with this letter for your review.

The Policy Amendment confirms that State and local taxes on aviation fuel, whether part of a general sales tax or otherwise, and whether imposed by an airport operator or by State or local taxing authorities, are subject to the federal restrictions on the uses of airport revenue. See 79 Fed. Reg. at 66287. Generally speaking, this means that proceeds from taxes on aviation fuel must be used for the capital or operating expenses of the airport where the fuel is sold, of the local airport system, or of other facilities owned or

operated by the airport and directly and substantially related to air transportation. 64 Fed. Reg. at 7718. In addition, State taxes on aviation fuel may be used to support State aviation programs. 79 Fed. Reg. at 66287. These restrictions do not apply to “grandfathered” taxes in effect on or before December 30, 1987.

### **State Aviation Fuel Taxes and Compliance**

In order to comply with the Policy Amendment, the State must identify all New Mexico state and local taxes on aviation fuel, determine whether grandfathering exists, and if not, whether use of the tax revenue complies with the Policy Amendment.

We have been advised that the sale of aviation gasoline, aviation jet fuel and other aviation fuel in the State of New Mexico is subject to taxation under New Mexico law, which includes the following

- An excise tax of .17 cents a gallon is assessed on gasoline that is used in aircraft propelled by engines other than turbo-prop or jet-type engines, pursuant to NMSA 1978 § 7-13-3.
- A gross receipts tax of 5.125% is assessed on the sale of jet fuel, pursuant to NMSA 1978, § 7-9-4.

The grandfathering provision found in the Policy Amendment would apply to the use of the State sales tax on jet fuel if the above or any other applicable taxes were in effect on December 30, 1987, and have not changed in character or use in any substantial way since that date. However, if the above or any other applicable aviation fuel taxes were imposed after December 31, 1987, tax revenues derived therefrom would be subject to the Revenue Use Policy and the Policy Amendment.

If the grandfathering provision does not apply, the State must identify the extent to which revenues derived from the applicable taxes are set aside properly for local airport purposes and State aviation programs in compliance with the Policy Amendment. Please note that the FAA recently clarified that the tax revenue use requirements are met when the state appropriates money for local airport purposes or State aviation programs from its general fund in an amount equal to or exceeding the local and State aviation fuel tax proceeds collected. *See*, “Questions for the FAA from NASAO Members February 25, 2015 and July 15, 2015”, attached.

### **Deadline to Submit Action Plan**

We urge the State to take whatever action is necessary to address these compliance issues, ensure compliance with federal requirements, and appropriately advise the FAA. The FAA has concluded that there is a need for all affected entities to have sufficient time to come into compliance with the Policy Amendment which became effective in December 2014. The FAA further understands that changes to bring State and local taxes into compliance may require State legislation. In this regard, the FAA requires that State officials submit by December 8, 2015, an action plan to initiate the process to amend any non-compliant State laws on use of aviation fuel tax revenues. *See*, 79 FR 66286, Response to Comment 4.

### **Penalties for Non Compliance**

The FAA's Policy Amendment empowers the U.S. Secretary of Transportation to impose a civil penalty, or seek other sanctions, such as an injunction, on State and local governments that fail to comply with these requirements. 79 Fed. Reg. 66288. Failure to submit an action plan may also delay or preclude federal grant funding.

If you have questions or require further information, please contact Mr. Randall S. Fiertz, Director, Office of Airport Compliance and Management Analysis, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. You also may contact me, and I will help put you in touch with Mr. Fiertz and others within the FAA who can guide the State in the necessary compliance.

Respectfully,

Sally Burbridge, Mayor

encl: Policy Amendment  
Questions for the FAA from NASAO Members

copy w/encl:

C: Dan Moran, Grants Administrator, Aviation Division  
Randy Fiertz, FAA

dated April 17, 2012, except airplanes on which modification status “32–64” is marked on the identification plate: Within 20,000 flight hours or 10 years after September 24, 2013 (the effective date of AD 2013–16–08), whichever occurs first, install a new jam nut having part number 49606–5, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012; and Goodrich Service Bulletin 49600–32–64 R3, dated December 15, 2011.

**(j) Retained Credit for Previous Actions With Change to Paragraph (j)(1)(iii) of This AD**

(1) This paragraph restates the credit provided by paragraph (j)(1) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with a change to the service information citation in paragraph (j)(1)(iii) of this AD. This paragraph provides credit for the actions required by paragraphs (g) and (i) of this AD, if those actions were performed before September 24, 2013 (the effective date of AD 2013–16–08), using the service information specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–031, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–031, Revision A, dated June 9, 2011.

(iii) Bombardier Service Bulletin 670BA–32–031, Revision B, dated July 29, 2011.

(2) This paragraph restates the credit provided by paragraph (j)(2) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before September 24, 2013 (the effective date of AD 2013–16–08), using the service information specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–033, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–033, Revision A, dated July 29, 2011.

**(k) Retained Parts Installation Limitations With Change to Paragraph (k)(2) of This AD**

(1) This paragraph restates the parts installation limitation specified in paragraph (k)(1) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. As of September 24, 2013 (the effective date of AD 2013–16–08), no person may install on any airplane an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, unless that retraction actuator assembly has been inspected as specified in paragraph (g) of this AD, and all applicable corrective actions (i.e., replacement of the retract actuator) specified in paragraph (g) of this AD have been done. Repeat the inspection specified in paragraph (g) of this AD thereafter at the intervals specified in paragraph (g) of this AD.

(2) This paragraph restates the parts installation limitation specified in paragraph

(k)(2) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with a revised part name. As of the effective date of this AD, no person may install on any airplane an MLG dressed shock strut having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012, unless that retraction actuator assembly has been inspected and all applicable corrective actions have been done, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012.

**(l) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier’s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2011–36R1, dated October 3, 2012, for related information. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#/documentDetail;D=FAA-2014-0483-0002>.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(4), (n)(5), and (n)(6) of this AD.

**(n) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on September 24, 2013 (78 FR 51055, August 20, 2013).

(i) Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012.

(ii) Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012.

(iii) Goodrich Service Bulletin 49000–32–46 R2, dated November 11, 2011.

(iv) Goodrich Service Bulletin 49600–32–63 R1, dated May 17, 2011.

(v) Goodrich Service Bulletin 49600–32–64 R3, dated December 15, 2011.

(4) For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); Internet <http://www.bombardier.com>.

(5) For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; email [jean.breed@goodrich.com](mailto:jean.breed@goodrich.com); Internet <http://www.goodrich.com/TechPubs>.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on October 28, 2014.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2014–26437 Filed 11–6–14; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Chapter I**

**[Docket No. FAA–2013–0988]**

**Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Policy Amendment.

**SUMMARY:** This action adopts an amendment to the FAA *Policy and Procedures Concerning the Use of Airport Revenue* published in the **Federal Register** at 64 FR 7696 on February 16, 1999 (“Revenue Use Policy”). This action confirms FAA’s long-standing policy on Federal requirements for the use of proceeds

from taxes on aviation fuel. Under Federal law, airport operators that have accepted Federal assistance generally may use airport revenues only for airport-related purposes. Local taxes on aviation fuel are subject to airport revenue use requirements. State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a State aviation program or for airport-related purposes. The statutory revenue use requirements apply to certain State and local government taxes on aviation fuel, as well as to revenues received directly by an airport operator. This document formally adopts, through an amendment to the Revenue Use Policy, FAA's interpretation of the Federal requirements for use of revenue derived from taxes on aviation fuel.

**DATES:** This document is effective December 8, 2014.

**FOR FURTHER INFORMATION CONTACT:** Randall S. Fiertz, Director, Office of Airport Compliance and Management Analysis, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3085; facsimile (202) 267-5257.

**SUPPLEMENTARY INFORMATION:**

**Availability of Documents**

You can get an electronic copy of this Policy and all other documents in docket FAA 2013-0988 using the Internet by: (1) Searching the Federal eRulemaking portal at <http://www.regulations.gov/search>; (2) Visiting FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/policy\\_guidance/](http://www.faa.gov/regulations_policies/policy_guidance/); or (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3085. Please make sure to identify the docket number, notice number, or amendment number of this proceeding.

*Authority for the Policy Amendment.* This Policy Amendment is published under the authority described in Subtitle VII, part B, chapter 471, section 47122, and the Federal Aviation Administration Authorization Act of 1994, § 112(a), Public Law 103-305, 49 U.S.C. 47107(l)(1) (Aug. 23, 1994).

**Background**

On November 21, 2013, FAA published a proposed amendment to its

policy on Federal requirements for the use of proceeds from taxes on aviation fuel. (78 FR 69789, November 21, 2013). This action finalizes the amendment of FAA's Revenue Use Policy. Under Federal law, airport operators that have accepted Federal assistance generally may use airport revenues only for airport-related purposes. The revenue use requirements apply to the proceeds from certain State and local government taxes on aviation fuel, as well as to revenues received directly by an airport operator. This document formally adopts FAA's interpretation of the Federal requirements for use of revenues derived from taxes on aviation fuel. Briefly, an airport operator or State government submitting an application under the Airport Improvement Program must provide assurance that revenues from State and local government taxes on aviation fuel will be used for certain aviation-related purposes. These purposes include airport capital and operating costs, and State aviation programs. The policy amendment applies prospectively to use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering from revenue use requirements. For existing taxes that do not qualify for grandfathering (which are State or local taxes on aviation fuel in effect on December 30, 1987), the FAA will allow for an up to three-year transition period from the effective date of this document.

The FAA invited public comment on the policy interpretation question, in part due to the interests of sellers and consumers of aviation fuel, and of State and local government taxing authorities on limits on the use of proceeds from taxes touching aviation fuel. The notice also solicited comments about whether there are other reasonable interpretations of the statute as it relates to local taxes that were not enumerated in the published notice of proposed clarification that should have been considered by the FAA.

The comment period for the notice of proposed clarification closed on January 21, 2014. The FAA extended the comment period for thirty days until March 3, 2014 (79 FR 5318, January 31, 2014) in order to provide the public additional time to submit comments on the proposed Policy amendment.

**Executive Order 13132 (Federalism)**

Executive Order 13132 establishes certain principles and criteria that apply to regulations, legislative comments, and other policy statements that have a substantial direct effect on States, or on the relationship between the national government and the States or on the

responsibilities among the various levels of government. Because States have flexibility in designing general sales taxes subject to the limited restriction on the use of aviation fuel tax proceeds, State decisions will ultimately influence, regulate, and control implementation of taxes, including those touching aviation fuel.

While this final policy amendment does not impose substantial direct requirement costs on State and local governments, this amendment may have Federalism implications due to effects on the use of the proceeds for taxes assessed on aviation fuel. FAA believes that the Federalism implications (if any) are substantially mitigated because the plain language of the statute at issue, 49 U.S.C. 47133, and the detailed legislative history, reflect strong Congressional intent that aviation fuel taxes be used for airport purposes and State aviation programs.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, FAA engaged in efforts to consult with and work cooperatively with States, local governments, and political subdivisions, including participating in conference calls with representatives from the National Governors Association, US Conference of Mayors, National Conference of State Legislatures, National League of Cities, and National Association of State Aviation Officials. In addition, FAA reached out to certain states on an individual basis and interested trade groups including Airlines for America; American Association of Airport Executives; and Airports Council International—North America. Furthermore, we published the proposed amendment for notice and comment, and received comments from Kentucky, Iowa, and Georgia. This notice responds to these comments.

Through consultation, meetings and teleconferences as part of a robust public engagement process, FAA has balanced the States' interests in meeting its taxing obligations, and Congress' intent to ensure that taxes on aviation fuel are expended for airport purposes. By doing so, the FAA has complied with the requirements of Executive Order 13132.

**Comments Received on the Proposed Policy Amendment**

The FAA received 25 substantive comments on the proposals, from airport operators; industry and nonprofit associations representing airports, air carriers, business aviation

and airport service businesses; an air carrier; State government agencies; and private citizens. This summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice.

A majority of commenters supported the general purpose of the policy (and the underlying statutes): using airport revenue for airport purposes and using State and local aviation fuel tax revenue for airport purposes or State aviation programs. Commenters representing airlines and airport users all supported the FAA's proposed amendment of the Revenue Use Policy regarding 49 U.S.C. § 47107(b) and § 47133. An air carrier expressed the position that there is no ambiguity in the 1987 amendment to section 47107, and maintained that there are no other possible correct interpretations of these statutes.

The comments requesting a change in the proposed policy tended to focus on several issues:

1. The unfairness of holding airport operators responsible for the actions of State and local government taxing authorities, particularly non-sponsor governments.
2. The intent of § 47133 to require compliance by non-sponsor State and local governments.
3. Defining the portion of general sales taxes collected on aviation fuel as an 'aviation fuel tax,' and the administrative burden of identifying the aviation fuel component of general taxes.
4. Time allowed before full compliance with § 47133 is required.
5. Clarifying that "noise mitigation" refers only to mitigation of aircraft noise.
6. How FAA will enforce § 47133 with respect to jurisdictions that are not parties to an AIP grant agreement.
7. The proposal requires a federalism analysis under Executive Order 13132.
8. Suggestions for editorial changes to the proposed policy language.

1. *Comment: Airport operators should not be held responsible for State and local taxes outside of the airport operator's control.*

The majority of commenters, including all of the airport and government commenters, argued that proposed new paragraph IV.D.2 would unfairly hold airport operators responsible for the imposition of taxes over which they had no control. Airport operators are typically local governments, either cities or counties, or public airport authorities. These local entities contend that they have no

control over State and local taxes, and therefore have no ability to eliminate a State or local tax that is not in compliance with Federal requirements for use of airport revenue. These commenters state that in many cases, an airport operator does not have control over local taxes, if the airport is located in a different jurisdiction than the operating government entity. They note that port authorities and airport authorities may not have any taxing power, and therefore have no ability to control even local taxes on the airport.

Beyond the complaint that this provision is unfair, the Airport Council International—North America (ACI-NA) raised additional objections to paragraph IV.D.2. First, 49 U.S.C. 47107(b) requires an airport sponsor to provide an assurance that the airport will remain in compliance with revenue use requirements. However, no local airport sponsor could actually provide that assurance because the airport sponsor has no ability to prevent a noncomplying State tax. Airport sponsors would find it impossible to provide assurance that other government agencies would comply with the revenue use statutes for the life of an AIP grant. Further, sponsors should not be required to agree to a condition that would subject the airport to sanctions with no ability to correct the noncomplying condition. Second, ACI-NA argues that holding airport sponsors responsible for State taxes is a federalism issue, as "an attempt to change the relationships" between Federal, and State and local governments. ACI-NA commented that the proposal does not comply with Executive Order 13132 on federalism, because the agency did not conduct a federalism analysis on the impacts on State taxing authority and the relationship between State and local governments and airport sponsors. The American Association of Airport Executives (AAAE) also suggested that the proposal may be in violation of the reservation of State powers in the U.S. Constitution, and urged FAA to conduct a federalism analysis of this proposal because of the impact on State and local government relations.

*Response:* Upon entering into an AIP grant agreement, an airport sponsor does in fact provide assurances that local taxes on aviation fuel will be in compliance with §§ 47107(b) and 47133, as required by Congress. The grant assurances provided by airport sponsors include Grant Assurance 25, which provides, in relevant part: "All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by

it for the capital or operating costs of the airport; the local airport system; or other facilities which are owned and operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property. . . ." Moreover, airport sponsors often can have influence on the taxation of aviation activities in their States and localities, and the FAA expects airport sponsors to use the influence they have to shape State and non-sponsor local taxation to conform to these Federal laws.

However, the FAA agrees with the majority of commenters that it would be unfair to penalize airport sponsors for taxes imposed by another entity. Thus, the FAA is revising paragraph IV.D.2 to acknowledge the differences in taxes that are and are not controlled by the airport sponsor, for purposes of grant compliance. For taxes within the airport sponsor's direct control, the airport sponsor must comply with the revenue use requirements of §§ 47107(b) and 47133. Further, in instances of unlawful revenue diversion where the sponsor is in control of the taxes, an airport sponsor can also be subject to administrative action in which the Secretary may withhold amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to Title 49. [See 49 U.S.C. 47107(n)(3).]

For taxes imposed by non-sponsor State and local governments, the airport sponsor will be expected to advise those entities of Federal requirements for use of aviation fuel tax revenues, and to take action reasonably within the sponsor's power to tailor State and local taxation to conform to the requirements of §§ 47107(b) and 47133. If a noncompliant tax is adopted by a non-sponsor State or local government, notwithstanding the airport sponsor's advice and efforts, the FAA would not take enforcement action against the airport sponsor out of fairness to the sponsor who is not responsible for the noncompliance. However, the FAA will pursue enforcement action pursuant to 49 U.S.C. 46301 or 47111 (f) against a non-sponsor State or local government that violates the Revenue Use Policy or the limitations in 49 U.S.C. 47133. This is similar to the approach that the FAA has taken to compliance with the obligation in grant assurance No. 21 to

maintain compatible land use around the airport.

Accordingly, as revised, paragraph IV.D.2 will state that assurance 25 will be considered an enforceable commitment with respect to taxes on aviation fuel imposed by the airport operator or owner itself; for taxes imposed by non-sponsor State and local jurisdictions, an airport sponsor will be expected to inform taxing authorities of Federal requirements and take reasonable action within the sponsor's power to influence State and local tax laws to conform to those requirements.

The comments on federalism and federalism analysis are discussed separately under Comment 7. With respect to the comment that the proposal raises issues regarding the 10th Amendment of the U.S. Constitution, the FAA appropriately presumes the constitutionality of the statutes implemented by this policy.

*2. Comment: FAA should not enforce compliance by State and local governments that are not airport sponsors.*

The Georgia Department of Law, on behalf of the Georgia Department of Transportation and the Georgia Department of Revenue (GDOT/GDOR), filed comments objecting to several elements of the proposed policy. GDOT/GDOR commented that applying sanctions for violation of §§ 47107 and 47133 to entities that are not airport sponsors is "unprecedented and illogical." (The FAA notes that sanctions would apply to non-sponsors under § 47133 and § 47111(f), whereas § 47107 is binding only on parties that have signed a grant agreement with FAA.) GDOT/GDOR bases its argument primarily on the observation that most FAA policy statements on revenue use and revenue diversion refer to airport sponsors, and do not mention non-sponsor entities.

*Response:* It is true that FAA published policy on revenue use refers to airport sponsors, but that fact alone does not deal with the breadth of § 47133, which imposes a federal statutory obligation on certain non-sponsors. Also, contrary to GDOT/GDOR's comments, the FAA has not been silent on this issue. In the few circumstances involving the issue of a non-sponsor imposing a tax on aviation fuel, the FAA has communicated a consistent message that compliance with § 47133 is required. The FAA letters to non-sponsors describing this obligation are cited in the notice of proposed policy at 78 FR 69790-69691. Copies of FAA's letters are posted in Docket No. FAA-2013-0988. The **Federal Register** Notice also explained

why FAA believed that there were "compelling reasons" for its past interpretations that support the adoption of an amendment to the Revenue Use Policy. 78 FR at 69792.

GDOT/GDOR argue that imposing sanctions (and therefore compliance) on non-sponsor governments is both unfair and contrary to the logical enforcement of the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et se. However, as noted, § 47133 imposes an obligation on entities that are not airport sponsors. First, the language of § 47133 (a) imposes a limitation on the use of local taxes on aviation fuel, regardless of whether the tax is imposed by a sponsor or non-sponsor. Second, § 47133 (c) limits the use of State-imposed taxes on aviation fuel to State aviation programs. Uses of tax revenues beyond these permissible uses are a violation of Section 47133. Therefore, the obligation to enforce compliance with the statute, using available sanctions for noncompliance, is not only logical but is required as part of the FAA's statutory responsibility for implementation of the AAIA.

GDOT/GDOR's posits that there should be no sanction on a non-sponsor government for violation of § 47133. But that would be contrary to the language of § 47133 which makes no distinction between sponsor or non-sponsor entities for purposes of the limitation on the use of aviation tax revenues. Moreover, FAA's civil penalty enforcement authority in 49 U.S.C. § 46301 specifically authorizes the imposition of civil penalties for a violation of § 47133 and does not exclude non-sponsors from its coverage. GDOT/GDOR's interpretation would effectively mean that non-sponsor governments are allowed to disregard the requirements of § 47133 and render the statutory requirement virtually meaningless.

Importantly, Congress did not limit FAA's enforcement authority in 49 U.S.C. § 47111 (f) to just airport sponsors, but rather permitted judicial enforcement to restrain "any violation" of chapter 471—that includes the requirements of § 47133—by *any person* for a violation. "Any violation" encompasses violations by non-sponsors as well as airport sponsors. This expansive authority is based on the plain language of section, 47111(f), and supported by a review of the legislative history and prior versions of the law under consideration. These prior versions limited enforcement to the airport sponsor. See 140 Cong. Rec. S7139-02, 1994 WL 27189 (noting that under the bill, "such court shall have jurisdiction to enforce obedience thereto

by a writ of injunction or other process, mandatory or otherwise, restraining such *airport sponsor* from further violation of such section or assurance and requiring their obedience thereto.") However, Congress ultimately expanded this authority by explicitly stating in section 47111(f) that "such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining *any person* from further violation." (emphasis added)

Given that the FAA interprets section 47111 and 47133 to obligate non-sponsor State and local governments to use proceeds from aviation fuel taxes for certain purposes, the FAA does not agree that the same sanctions that apply to other aviation statutes would not apply to § 47133. Congress expressly provided for such sanctions by including § 47133 in the statutory provisions that can be enforced by civil penalty in 49 U.S.C. 46301. In addition as noted, compliance with § 47133 by non-sponsor State and local governments may be enforced by application to the U.S. district court for judicial enforcement under 49 U.S.C. 47111(f).

*3. Comment: Defining the taxes on aviation fuel collected as part of a general sales tax is not supported by legislation and would be an administrative burden to State and local governments.*

The American Association of Airport Executives (AAAE) commented that applying the revenue use requirements to generally applicable taxes, such as sales taxes and taxes on all fuel products, is not supported by the legislative history and incorrectly interprets §§ 47107(b) and 47133. Both AAAE and GDOT/GDOR commented that it would be difficult and costly for State and local governments and taxpayers to segregate revenues collected on aviation fuel from the rest of a general tax collection. The Franklin-Hart Airport Authority, Georgia, expressed concern that redirecting some local taxes on aviation fuel to the airport could lead those jurisdictions to reduce other, non-tax support for the airport. The comment suggested that for that reason the proposed policy could be a hardship for the airport, but did not assert that the proposed amendment was incorrect. One individual commented that an airport receives the same general benefit as other taxpayers, and that general taxes on aviation fuel sales should be retained by State and local governments to pay for these general community services.

*Response:* AAAE and one individual were the only commenters that

specifically objected to the proposed amendment that general taxes collected on aviation fuel sales are “taxes on aviation fuel.” The FAA’s rationale for clarifying that general sales taxes also collected on aviation fuels constitute “taxes on aviation fuel” is based on the plain reading of the statute. The Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. Law No. 100–223, amended the airport grant revenue assurance provision to include, within the scope of revenue retention, “any” taxes on aviation fuel. The 1994 recodification, which removed the word “any” from the statutory text as recodified in 49 U.S.C. 47107(b), did not make any substantive changes in the law. See Public Law 103–272, 108 Stat. 1378:

Certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted by subsections (c)–(e) of this section without substantive change as subtitles II, III, and V–X of title 49, United States Code, “Transportation”. Those laws may be cited as “49 U.S.C. \_\_\_\_\_”. Section 1.(a)

Additionally, determining that the statute did not include general taxes would permit States to tax aviation fuel as “general” taxes without limit, and would be inconsistent with the purposes of the revenue use statutes. The FAA continues to believe that applying the requirements of §§ 47107(b) and 47133 to the portion of general taxes collected on aviation fuel sales, in addition to aviation-specific fuel taxes, is the most reasonable interpretation of those statutes, and most consistent with the congressional intent of the legislation on use of aviation fuel tax revenues. AAE, which does not represent local governments but whose membership, representing airports and organizations that support the airport industry, has an interest in this issue, and GDOT/GDOR commented on the burden of reporting fuel sales as separate from other items taxed under the same ordinance.

As explained more fully below, the FAA would permit a State a reasonable amount of time to bring itself into compliance through an “action plan,” which takes account of the State’s legislative schedule, if necessary. And while we appreciate that there could be some additional work required to track the amount of “general” tax revenue attributable to aviation fuel, the FAA is charged with implementing § 47133, which does not carve out an exception for revenue generated through a general tax. We believe that the FAA’s acceptance that a State will require time to bring itself into compliance will afford the State sufficient time to

develop a mechanism for administering taxes in accordance with this policy.

With respect to the comment that aviation fuel tax revenues should support general government services, the FAA notes, first, that general sales taxes of all other products and services at an airport other than aviation fuel sales do go to support State and local general programs. Also, where non-sponsor State and local governments provide services directly to the airport, those jurisdictions can charge for those services and be reimbursed from airport funds.

4. *Comment: The FAA should clarify the time line allowed for jurisdictions imposing taxes that affect aviation fuel to come into compliance with the policy.*

GDOT/GDOR requested a more definitive time for Georgia state agencies and local jurisdictions to comply with the announced policy, and specifically requested that the FAA provide at least 180 days from the final policy effective date. GDOT/GDOR based this request on the time required to set up tracking systems for aviation fuel sales, and to amend State laws that mandate use of tax proceeds in a manner inconsistent with the FAA policy. Airlines for America and the Air Line Pilots Association filed joint comments urging that FAA limit any grace period before compliance is required to 60 days, and that if jurisdictions require more time, they can stop collecting the taxes until the tax law is brought into compliance.

*Response:* The notice of proposed policy amendment stated that FAA would allow a reasonable time for noncomplying tax laws to be brought into compliance with federal law. By this notice FAA is announcing a formal amendment to its Revenue Use Policy; the policy underlying this amendment may not have been followed previously by affected State and local government non-sponsors—despite the existence of DOT/FAA’s legal opinions on this subject. The amendment we adopt today is a final decision and amends FAA’s Policy and Procedure Concerning the Use of Airport Revenue as set forth below. The amendment binds the FAA and the Secretary of Transportation, as well as airport sponsors and non-airport sponsors (including a State, a political subdivision of a State, and a political authority of at least 2 States) covered by this Policy.

Therefore, after considering on this matter, the comments we have received and the potential difficulties with requiring immediate compliance, FAA has concluded that there is a need for all affected entities to have sufficient time to come into compliance with the

final policy announced today. GDOT/GDOR itself requested additional time to come into compliance with the policy. While comments were limited to agencies of the State of Georgia and a few local jurisdictions in Georgia, the FAA understands that other States may have laws that require, or at least allow, proceeds of general taxes on aviation fuel to be used for purposes other than airports or State aviation programs.

The FAA further understands that changes to bring State and local taxes into compliance may require State legislation. The Georgia legislature meets each year from January through March. Accordingly, in Georgia, the State and local taxes at issue could not practically be amended until early 2015. A legislative season from January to March or April is common to many other States as well. On this basis, the FAA believes that State and local officials should prepare an action plan to initiate the process to amend any non-compliant State laws and local ordinances as necessary to conform to federal law on use of aviation fuel tax revenues. The action plan should detail the process necessary to develop reporting requirements and tracking systems for discrete information on aviation fuel tax revenues. The plan may include a reasonable transition period, not to exceed three years, during which the FAA would agree, in an exercise of its prosecutorial discretion, not to enforce the revenue use requirement against a non-sponsor State or local government. State and local governments should submit an action plan to the FAA within a year of the effective date of this notice.

Initiation of an action plan would provide State and local governments sufficient time to plan for restructuring of general revenues to adapt to the dedication of aviation fuel tax revenue to airports and State aviation programs within a reasonable transition period, not to exceed three years from the effective date of this notice. Demonstration of an action plan detailing (1) a commitment to undertake the legislative process; and (2) the timeframe for action within the three year period, will demonstrate voluntary compliance with federal obligations.

5. *Comment: The policy should make clear that “noise mitigation” refers only to mitigation of aircraft noise.*

The National Association of State Aviation Officials commented that the reference to off-airport noise mitigation, as an acceptable use of aviation fuel tax proceeds, should be revised to clarify that this refers only to noise related to aircraft operation.

*Response:* The definition of “noise mitigation” was not the subject of the proposed amendment. While the phrase “noise mitigation” in Section 47133 commonly refers to aircraft noise, we decline here to reach whether the statute precludes consideration of other sources of noise for mitigation purposes. In addition, we note that the statute provides for use of airport revenues on and off airport for noise mitigation purposes.

6. *Comment: FAA should clarify how it will require non-airport sponsors to comply with the policy.*

The Iowa Public Airports Association requested clarification on how parties that have not entered into a grant agreement with the FAA would be required to comply with the federal requirements for use of aviation fuel tax revenues.

*Response:* The preamble of the notice of proposed policy noted that there are two means of enforcing compliance with § 47133 by non-sponsor State and local governments: civil penalties, under 49 U.S.C. 46301(a), and application to the U.S. district court for judicial enforcement under 49 U.S.C. 47111(f). While not an issue in Iowa, States that have entered into block grant agreements with the FAA under 49 U.S.C. 47128 could also be subject to action for breach of that agreement. The FAA agrees that the agency’s enforcement process should be described in the policy statement itself. Accordingly, new language has been added to Section IX.E., *Sanctions for Noncompliance*, for this purpose.

7. *Comment: The proposal affects the relationship between federal, State and local governments, and therefore requires a federalism analysis under Executive Order 13132.*

ACI-NA and AAAP commented that the proposal does not comply with Executive Order 13132 on federalism, because the proposed policy is not required by statute, and because the agency did not conduct a federalism analysis on the impacts on State taxing authority and the relationship between State and local governments and airport sponsors.

*Response:* First, to the extent the comment referred to paragraph IV.D.2 of the proposed policy, holding airport sponsors responsible for taxation beyond their control, that issue is resolved by the changes to paragraph IV.D.2 in the final policy.

Second, the FAA does not agree that the proposed policy is not required by statute. In the notice of proposed policy, the FAA analyzed each of the key terms of the statute with reference to the legislative intent of the revenue use

legislation, to the meaning of the statute as a whole, and to the consistent use of terminology throughout the AAIA. Several commenters not only supported the FAA amendment, but commented that no other interpretation of the statute was reasonably possible. Even if an alternative interpretation of certain terms were theoretically permissible, a policy interpreting the statute in a manner that substantially undermined the legislative purpose of the statute is not a viable option for the agency. Accordingly, the FAA believes that the policy as adopted correctly implements the revenue use legislation adopted by Congress. The policy is, therefore, required by statute for purposes of the executive order. Because this policy simply implements the explicit mandate set forth in section 47133, the requirements of Executive Order 13132 and DOT’s Guidance on Federalism (July 21, 1988), are not triggered.

Thus, although a federalism analysis of this policy is not required by Executive Order 13132, the FAA did engage in efforts to consult with and work cooperatively with States, local governments, political subdivisions, and interested trade groups. Through consultation, meetings and teleconferences as part of a robust public engagement process, FAA has balanced the States’ interests in meeting its taxing obligations, and Congress’ intent to ensure that taxes on aviation fuel are expended for airport purposes or for State aviation programs consistent with the mandate set forth in 49 U.S.C. 47133.

In addition to that engagement process, the FAA also published the policy amendment for notice and comment in the **Federal Register**, soliciting comment from State and local governments, as well as other interested parties. The only cost information submitted by any commenter was received from the Franklin-Hart Airport Authority, which expressed concern that redirecting some local taxes on aviation fuel to the airport could lead those jurisdictions to reduce other, non-tax support for the airport. However, the anticipated cost would result not from the agency’s policy itself, but from the expected actions of local governments in reducing voluntary support for the airport.

For the above reasons, the FAA finds that further analysis of the adopted policy for federalism issues is not required by Executive Order 13132.

8. *Comment: The final policy should include certain grammatical and style changes.*

*Response:* Delta Airlines and Airlines For America recommended certain edits for grammar and clarity:

Paragraph II.B.2: Clarify the phrase “on or off the airport.”

Paragraph IV.D.1: Clarify that only State aviation fuel taxes may be used for State aviation programs.

Paragraph IV.D.4.b: Clarify that §§ 47107(b) and 47133 apply to taxes on the use of aviation fuel.

In each case the proposed edits more accurately describe the requirements of §§ 47107(b) and 47133 as stated in prior FAA policy, and do not make any substantive change in the policy proposed in the notice. Accordingly, the FAA has made the requested edits in the final policy.

### Final Policy

For the reasons set out above, the FAA amends the Policy and Procedure Concerning the Use of Airport Revenue, published in the **Federal Register** at 64 FR 7696 on February 16, 1999, as follows:

1. Section II, Definitions, paragraph B.2, is revised to read:

State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered subject to the revenue-use requirements in 49 U.S.C. 47107 (b) and 47133. However, revenues from a State tax on aviation fuel may be used to support a State aviation program, and airport revenues may be used on or off the airport for a noise mitigation purpose.

2. In Section IV, Statutory Requirements for the Use of Airport Revenue, renumber paragraphs D and E as paragraphs E and F, and add a new paragraph D to read as follows:

D. Use of Proceeds from Taxes on Aviation Fuel.

1. Federal law limits use of the proceeds from a State or local government tax on aviation fuel to the purposes permitted in those sections, as described in IV.A. of this Policy. Proceeds from a tax on aviation fuel may be used for any purpose for which other airport revenues may be used, and proceeds from a State tax may also be used for a State aviation program.

2. Airport sponsors that are subject to an AIP grant agreement have agreed, as a condition of receiving a grant, that the proceeds from a State or local government tax on aviation fuel will be used only for the purposes listed in paragraph 1. This assurance is considered an enforceable commitment with respect to taxes on aviation fuel imposed by the airport operator. For taxes on aviation fuel imposed by non-sponsor State government and other local jurisdictions, airport sponsors are

expected to inform taxing authorities of Federal requirements for use of aviation fuel tax revenues and to take reasonable action within their power to influence State and local tax laws to conform to those requirements.

3. The Federal limits on use of aviation fuel tax proceeds apply at an airport that is the subject of Federal assistance (as defined in Section II.b.2 of this Policy), whether or not the airport is currently subject to the terms of an AIP grant agreement, and regardless of the State or local jurisdiction imposing the tax.

4. The limits on use of aviation fuel tax revenues established by section 47107(b) and section 47133:

a. Apply to any tax imposed on aviation fuel by either a State government or a local government taxing authority whether or not acting as a sponsor or airport owner or operator;

b. Apply to any tax on aviation fuel, whether the tax is imposed only on aviation fuel or is imposed on other products as well as aviation fuel. However, the limits on use of revenues apply only to the amounts of tax collected specifically for the sale, use, purchase or storage of aviation fuel, and not to the amounts collected for transactions involving products other than aviation fuel under the same general tax law;

c. apply to taxes on all aviation fuel dispensed at an airport, regardless of where the taxes on the sale of fuel at the airport are collected; and

d. apply to a new assessment or imposition of a tax on aviation fuel, even if the tax could have been imposed earlier under a statute enacted before December 30, 1987.

3. In Section IX, Monitoring and Compliance, add a new paragraph h. to E.1 to read as follows:

h. For a non-sponsor State or local government that fails to comply with requirements for use of proceeds from a tax on aviation fuel, the Secretary may assess a civil penalty as described in E.1.g, or apply to a U.S. district court for a compliance order. In addition, for a State government that participates in the State Block Grant Program under 49 U.S.C. 47128, the FAA may have additional sanctions for violation of the State's commitments in its application for participation in the program.

Issued in Washington, DC, on November 3, 2014.

**Randall S. Fiertz,**

*Director, Office of Airport Compliance and Management Analysis.*

[FR Doc. 2014-26408 Filed 11-6-14; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 744

[Docket No. 141029906-4906-01]

RIN 0694-AG31

#### Venezuela: Implementation of Certain Military End Uses and End Users License Requirements Under the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In response to the Venezuelan military's violent repression of the Venezuelan people, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) in this final rule to impose license requirements on the export, reexport, or transfer (in-country) of certain items to or within Venezuela when intended for a military end use or end user. This change complements an existing U.S. arms embargo against Venezuela for its failure to cooperate in areas of counterterrorism.

**DATES:** *Effective date:* This rule is effective November 7, 2014

**FOR FURTHER INFORMATION CONTACT:** Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Phone: (202) 482-4252.

#### SUPPLEMENTARY INFORMATION:

##### Background

Starting in February 2014, the Venezuelan military was instrumental in implementing a violent crackdown on anti-government protests. The government's repression included direct violence against protesters, detentions of protesters and political leaders, and acts of intimidation, resulting in numerous deaths and injuries. On July 30, 2014, the Department of State imposed visa restrictions against Venezuelan government officials, including members of the Venezuelan military, who participated or were complicit in human rights violations and undermined democratic processes.

The actions and policies of the Venezuelan military undermine democratic processes and institutions and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

In response to abuses committed by the Venezuelan military on the Venezuelan people, the U.S. Government is imposing "military end

use" and "military end user" license requirements on Venezuela.

#### Military End Use and End User Restrictions

It is generally the policy of the United States Government to facilitate U.S. exports for civilian end uses, while preventing exports that would enhance the military capability of certain destinations and thereby threaten the national security and foreign policy of the United States and its allies. In furtherance of this policy, the Bureau of Industry and Security (BIS) established a license requirement for certain items intended for "military end uses" in a final rule published June 19, 2007 (72 FR 33646). Specifically, that final rule established a control, based on knowledge of a "military end use," on exports and reexports of certain items on the Commerce Control List (CCL) that otherwise would not require a license to a specified destination. The "military end use" control initially applied to certain items exported, reexported or transferred (in country) to the People's Republic of China. Subsequently, BIS applied "military end use" and "military end user" controls to Russia in a final rule published September 17, 2014 (79 FR 55608).

#### *Imposition of Military Restrictions on Venezuela*

To implement the U.S. Government's response to the abuses by the Venezuelan military, in this rule, BIS amends § 744.21 of the EAR to apply "military end use" and "military end user" license requirements to Venezuela. Specifically, BIS amends § 744.21 by adding "or Venezuela" after "Russia," wherever that name appears, including in the heading of the section. Items subject to these license requirements are those listed in Supplement No. 2 to Part 744.

This final rule also adds a paragraph (h) to address the effects of these new license requirements on transactions under contract prior to the effective date of this rule.

#### Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on November 7, 2014, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without

**Questions for the FAA from NASAO Members**  
**February 25, 2015 and Updated July 15, 2015**

Recently, the FAA provided an additional response to questions from Michigan and Georgia. We've added those responses below to the earlier responses received from the FAA.

**FAA's Answer to Question from Michael Trout, Executive Administrator for the Michigan Department of Transportation (MDOT)-Office of Aeronautics**

**Question:**

Have you determined whether the use of "offsets" or "amounts equal to" the tax collected on aviation fuel is acceptable for the purpose of compliance with the Revenue Use Policy. As the portion of our sales tax in question is constitutionally dedicated to other purposes (education), we are contemplating as part of an action plan a methodology to accurately record the amount being collected and then a mechanism to allocate that amount from other state sources to state aviation programs. Any insight would be very helpful.

**Response:**

***Yes, we have concluded that offsets are permitted. Aviation fuel tax statutory requirements are met by a State appropriating money for airport purposes from its general fund in an amount equal to or exceeding the aviation fuel tax proceeds collected, and remitting such funds into the State aviation program fund, or to the applicable airport revenue account.***

***We want to point out your question raises another issue since you reference that a portion of the aviation fuel sales tax being constitutionally dedicated to other purposes. The FAA's Policy and Procedures Concerning the Use of Airport Revenues (64 Fed. Reg. 7696, February 16, 1999) provides for taxes on aviation fuel in effect on December 30, 1987 to be "grandfathered". We do not have sufficient data concerning the constitutionally dedicated portion of the taxes and cannot comment further on the grandfathering of the aviation fuel taxes. Guidance regarding the process to determine whether a tax is eligible for grandfathered status is posted at regulations.gov, Docket FAA-2013-0988.***

***In proceeding with a permitted offset, the State and local governments interested in making an offset need to confirm that such actions are lawful and consistent with applicable State and local laws, and advise FAA accordingly. Additionally, the action plan should confirm that requirements are in place to ensure the appropriations are implemented and enforceable by state or local agencies; the State will also need to account for and remit to the State aviation fund or to a local airport entity the dollar amount of the revenues generated from the state or local aviation fuel tax, as applicable. The State must have appropriate controls in place to ensure tax revenues are promptly remitted to the appropriate airport revenue accounts and State aviation program accounts.***

***Aviation Fuel Tax Grandfathering Action Plans***

***The FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel, (79 Fed. Reg. 66282, November 7, 2014) (Amendment) provides that proceeds from***

**taxes on the sales of aviation fuel (imposed by either an airport sponsor or a non-sponsor) are required to be used for airport-related purposes except for taxes that qualify for grandfathering from revenue use requirements. State taxes on aviation fuel may also be used for a state aviation program.**

**Taxes on aviation fuel that qualify for grandfathering are state or local taxes on aviation fuel in effect on December 30, 1987. Any amendments of the grandfathered tax statutes that make substantive changes after December 30, 1987, do not qualify for continued grandfathered status. FAA will need to receive justification from state and local taxing authorities to make a determination of the grandfathered status of existing state and local taxes in effect on December 30, 1987.**

**The guidance provided on the following scenarios should assist airport sponsors and non - sponsors to determine an appropriate course of action and/or development of an action plan for aviation fuel taxes that may or may not qualify for grandfathered status:**

**(1) State and/or local tax statute in effect on December 30, 1987, and has been amended forward requiring that funds be used for airport or state aviation purposes – no grandfathering issue; statement from entity confirming use of taxes in compliance with the law.**

**(2) State and/or local tax statute in effect on December 30, 1987, or thereafter, exempts aviation fuel tax –no grandfathering issue; statement from entity confirming the use of taxes in compliance with the law.**

**(3) State and/or local tax statute in effect on December 30, 1987, without any changes since enactment; proceeds used for other than airport purposes; and no current grandfathering determination - submit action plan providing written justification why tax on aviation fuel qualifies for grandfathered status, with the following:**

**a. True and correct copies of original legislation and/or tax code and summary explanation of law reflecting tax was in effect on December 30, 1987, and unchanged;**

**b. Document identifying the purpose and applicability of the tax, the use of proceeds, and any administrative costs charged for the collection and allocation of the proceeds of the aviation fuel tax;**

**c. Document must identify the tax rate or rates, credits, or exemptions; and**

**d. Document detailing commitment to advise of any subsequent amendments that could affect grandfathered status.**

**(4) State and/or local tax statute in effect on December 30, 1987, and amended in subsequent periods, proceeds used for other than airport purposes, and no current grandfathering determination – submit action plan providing written justification why tax on aviation fuel qualifies for grandfathered status for portion of tax in effect on December 30, 1987, with the following:**

**a. True and correct copies of original legislation and/or tax code and summary explanation of law reflecting tax was in effect on December 30, 1987, and the amendments;**

**b. Document identifying the effective date of the aviation fuel tax, the purpose and applicability of the tax, the use of the proceeds, and any administrative costs charged for the collection and allocation of the proceeds of the aviation fuel taxes;**

**c. Document identifying the tax rate or rates, credits, or exemptions; and**

**d. Document detailing commitment to advise of any subsequent amendments that could affect grandfathered status.**

**(5) State and/or law tax statute not in effect on December 30, 1987, and not eligible for grandfathered status – submit action plan to correct non-compliant law with the following:**

**a. True and correct copies of the legislation and/or tax code, and summaries of the legislation creating the tax on aviation fuel;**

**b. Document identifying the effective date of the aviation fuel tax, the purpose and applicability of the tax, the use of the proceeds, and any administrative costs charged for the collection and allocation of the proceeds of the aviation fuel taxes;**

**c. Summaries of any amendments and/or recodifications of the tax code;**

**d. Document identifying the tax rate or rates, credits, or exemptions; and**

**e. Detail the commitment to undertake the legislative process, including the process necessary to develop accounting, tracking, and reporting mechanisms to provide for discrete information on aviation fuel tax revenues, and disclosure of a reasonable transition period (not to exceed three years) to implement the necessary processes to become compliant with the Amendment.**

In developing an action plan, GDOT and GDOR submitted the following questions to the FAA for clarification regarding the New Policy:

1. If the AAIA [Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47101, et seq.)] requires that the proceeds from a particular tax on aviation fuel imposed by a local taxing jurisdiction (e.g., a county or a municipality) be used by that jurisdiction for airport improvement or aviation-related purposes (hereinafter “airport purposes”), may that requirement be satisfied by the State’s appropriation of monies for airport purposes from its general fund?

**Yes. The AAIA requires the proceeds from local aviation fuel taxes imposed by a particular jurisdiction be used by that jurisdiction for the capital or operating costs of (a) the airport; (b) the local airport system; or (c) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Additionally, in accordance with 49 U.S.C. § 47133, a State tax on aviation fuel may be used to support a State aviation program, and airport revenue may be used on or off the airport for a noise mitigation purpose.**

***We have concluded that these aviation fuel tax statutory requirements may be satisfied by the State's appropriation of monies for airport purposes from its general funds. We are labeling this type of action as an offset, and are permitting offsets when the State appropriates money for airport purposes from its general fund in an amount equal to or exceeding the aviation fuel tax proceeds collected, and then remits such funds into the applicable airport revenue account. The same is true for a State aviation fuel tax; the State could appropriate monies from its general fund and deposit an amount equal to or exceeding the State aviation fuel tax proceeds into the State aviation program fund.***

***State and local governments interested in making an offset would need to confirm that such actions are lawful and consistent with applicable State and local laws, and advise FAA accordingly. Additionally, appropriate enforceable administrative or legislative initiatives would need to be in place, as well as accounting, tracking, and reporting systems, to ensure airport revenue accounts and State aviation program accounts receive on a continuing basis during each fiscal year an amount equal to the full amounts collected for aviation fuel taxes.***

2. If the answer to Question No. 1 is "yes," would the State's appropriation for that purpose have to be reflected in a specific line item in the State's annual budget?

***Yes, the State's appropriation from its general fund for airport purposes would have to be reflected in a specific line item in the State's annual budget. A specific line item for airport purposes in a State's annual budget appropriation is a component of the required accounting, tracking, and reporting mechanisms that is required to be explained in the action plan to ensure airport revenue accounts receive on a timely basis an amount equal to or exceeding the amounts collected as aviation fuel taxes. The action plan should confirm that requirements are in place to ensure the appropriations are implemented and enforceable by state or local agencies as applicable. See Question No. 4 for information regarding appropriated funds, payment, and reconciliation requirements.***

3. If the answer to Question No. 1 is "yes," and the local taxing jurisdictions do not use any of those tax proceeds for airport purposes, must the State's appropriation at least be equal to the total amount of tax on aviation fuel derived by all local jurisdictions in the State in order to comply with the AAIA's requirements? For example, if local sales taxes on aviation fuel state-wide total \$100 million (none of which is used by the local taxing jurisdictions for airport purposes), would the State's appropriation for airport purposes have to be at least \$100 million?

***We understand the question to ask whether the State is required to appropriate and pay an amount equal to the aviation fuel tax proceeds levied and collected within a local jurisdiction when such proceeds are not used for airport purposes. Yes, the amount of the State's annual appropriation for airport purposes must be at least equal to or exceed the total amount of aviation fuel taxes derived by all local jurisdictions in the State.***

4. If the answers to Questions No. 1 and 3 are both “yes,” may the State’s appropriation for airport purposes for its upcoming fiscal year (July 1 – July 30) be based on the local tax collected on aviation fuel for the most recently completed fiscal year?

***As noted above, the answers to Questions No. 1 and 3 are “yes.” The answer to Question No. 4 is yes. The State’s payment of collected aviation fuel taxes to airport sponsors may come from appropriated funds in one fiscal year based on the local aviation fuel taxes collected during the immediate prior fiscal year, provided the payments made are reconciled with amounts collected in accordance with Generally Accepted Accounting Standards (GAAP) and such payments are made on a timely and prompt basis within defined reporting periods. The State’s action plan should detail the process for collection, timely reconciliation and prompt payment of appropriated funds within defined reporting periods.***

5. If the answers to Questions No. 1 and 3 are both "yes," would the funds appropriated by the State for airport purposes have to be used or distributed in a way that matched up with each local jurisdiction's tax collections on aviation fuel, or could the appropriated funds be used or distributed more generally? For example, if all local taxes on aviation fuel equaled \$100 million statewide, but only \$1 million was attributable to a particular jurisdiction, would \$1 million of the State's appropriated funds have to be distributed or used in that particular jurisdiction for airport purposes? Or would it suffice that \$100 million in appropriated funds are used state-wide for airport purposes, regardless of how much a local jurisdiction has received in taxes on aviation fuel and where the appropriated funds are used?

***As noted above, the answers to Questions No. 1 and 3 are “yes.” State appropriated funds for airport purposes have to be used or distributed to match each local jurisdiction’s tax collections on aviation fuel. Thus, the \$1 million of appropriated funds attributable to a particular jurisdiction for airport purposes must be used in that local jurisdiction for permissible airport projects or programs. It does not suffice that \$100 million in appropriated funds is used state-wide for airport purposes.***

The following are the original questions from the states and the FAA’s response:

- I. *First, it is clear that 1987 is the grandfather point. For clarity, a tax in place before then and unchanged is grandfathered, but what if there is a tax in place before 1987 which has been amended either to change the rate, or to add or subtract what is covered (for example when Virginia changed its sales tax laws 25 years or so ago to exclude certain foods and medicines). Does that change the grandfathered status?*
  - ***It could since it depends on***
    - ***Exempted aviation fuel, then added back in-not exempted***
    - ***Rate changed from 4% to 6%, then only the 4% revenue is “grandfathered” – the overage must be used for airport purposes***
    - ***What if tax “sunsets” but was then extended? Depends on if gap.***



- ii. ***In general, if the revenue diversion was lawful, FAA would not be concerned with how the funds are spent – if tax was in place before December 30, 1987.***

V. *If a state has a tax that is subject to the FAA's policy and the revenue from that tax is constitutionally earmarked for non-aviation purposes:*

1. *May the state come into compliance with the FAA policy by exempting aviation fuel from that tax?*

- ***Simply, yes. If aviation fuel is exempt from any state or local tax, there would be no issue.***
- ***This would be the easiest solution as far as FAA is concerned.***

2. *Assuming the answer to the first question is yes, how long will the state have to implement such an exemption without incurring penalties or sanctions (assuming that until the exemption kicks in, the revenue will continue to be distributed according to the constitutional earmark)?*

- ***The state will have one year (from December 8, 2014) to include the exemption of taxes on aviation fuel in the action plan.***
- ***Exemption to be implemented within a reasonable transition period, not to exceed three years (no later than December 8, 2017).***

3. *Will the FAA be providing formal notification to states on whether they are potentially not in compliance?*

- ***Not unless the FAA receives a complaint or notification.***
- ***Too many possible state/municipality combinations for FAA to provide direct notification.***

4. *If so, when will that occur?*

- ***Not applicable - won't occur.***

VI. *Is the FAA policy limited to aviation fuel sales tax revenue from all NPIAS airports or only federally obligated NPIAS airports?*

- ***The issue is whether the aviation fuel is being taxed. The limits on use of aviation fuel tax revenues apply to any tax imposed on aviation fuel by either a State government or a local government taxing authority whether or not acting as a sponsor or airport owner or operator.***

- ***NPIAS does not come into consideration within the guidelines of the amendment. The restrictions on use of aviation fuel tax proceeds apply regardless of whether or not the airport is currently subject to the terms of an AIP grant agreement.***

*VII. If only federally obligated airports: For the purpose of the FAA policy, does accepting a planning grant only (no construction grants) result in an airport falling under this new policy?*

- ***For this purpose, an airport receiving a planning grant is deemed as having “received federal assistance” and therefore, this policy applies. (See clarification in the 2014 amendment to the grant assurances at 79 Fed. Reg. 18733, April 3, 2014.)***
- ***A sponsor undertaking a federally funded planning project is subject to the revenue use requirements.***

*VIII. Offsets.*

*Can tax on aviation fuel revenue be collected and used for non-airport/state aviation system purposes and then be off-set by equal or higher expenditures from the state/municipality on state aviation programs/airports?*

- ***Under review by FAA.***

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (L)  
**AGENDA TITLE:** Resolution 2015-976 Application to BLM for Surface ROW for East Aztec Arterial

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

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## **PROJECT DESCRIPTION / FACTS**

- July 2009 the City Commission approved Resolution 2009-804 Supporting the application to the BLM for Right of Way for the East Aztec Arterial. The application was for a minimum ROW of 150' for arterial crossing federal lands administered through BLM. The section of the arterial crossing federal lands is Phase 2 (construction anticipated in 2017).
- As design has progressed, 150' ROW has been determined to be insufficient for a four lane roadway including slope protection. Retaining walls may be a construction alternate in some areas to reduce the amount of right of way required but would significantly increase construction costs.
- A meeting was held with BLM on November 12, 2015 and the City was advised in addition to submission of an application to amend the original ROW grant, a support resolution is required. The expansion of the right of way will require additional biological and cultural surveys and a new environmental assessment. BLM has indicated their process for approval will require six to eight months to complete and grant the ROW.

## **PROCUREMENT / PURCHASING (if applicable)**

- Not Applicable

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

- The City is exempt from the BLM ROW fees. A new environmental assessment was anticipated in the fees negotiated with Wilson & Co in 2014. Wilson & Co will review their agreements and scope of work with their subcontractor if additional adjustments are necessary due to new biological and cultural survey requirements.

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**SUPPORT DOCUMENTS:** Resolution 2015-976

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2015-976 Supporting the Amended Application to BLM for Surface ROW for the East Aztec Arterial.

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**RESOLUTION 2015-976**  
**COMMISSION SUPPORT FOR AMENDED APPLICATION TO BLM FOR RIGHT OF WAY ON FEDERAL LANDS FOR EAST AZTEC ARTERIAL**

**WHEREAS**, the City of Aztec is developing the East Aztec Arterial to provide traffic relief around the downtown area of Aztec connecting to US Highway 550 on the south side of Aztec, proceeding in an northeasterly direction to intersect with NM173; and

**WHEREAS**, the East Aztec Arterial will provide economic development opportunities benefiting the City, San Juan County and the State of New Mexico; and

**WHEREAS**, the route of the East Aztec Arterial will be constructed on a combination of private, public (federal and state) and city properties and

**WHEREAS**, the City identified a minimum right of way for the arterial to be 150' in July 2009 and received Right of Way grant NMNM123498 in 2010; and

**WHEREAS**, the design requires a total of 450' right of way be obtained and requires and amended application be submitted; and

**WHEREAS**, it is necessary for the City to secure the necessary right of ways to finalize funding and proceed with final design and phased construction as funding is available; and

**NOW, THEREFORE, BE IT RESOLVED** that the Aztec City Commission supports the amended application for Transportation Facilities on Federal Lands specific to Right of Way requirements for the East Aztec Arterial.

**ADOPTED AND APPROVED** this 17<sup>th</sup> day of November, 2015

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

Attest:

\_\_\_\_\_  
Karla H. Sayler, City Clerk

# Staff Summary Report

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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** IX. CONSENT AGENDA (M)  
**AGENDA TITLE:** Resolution 2015-977 Application to BLM for Waterline ROW for East Aztec Arterial

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

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## **PROJECT DESCRIPTION / FACTS**

- As design has progressed on the arterial route and in discussions with NMDOT, the 10" waterline included in phase 1b will be extended for the length of phase 2. The State Transportation Plan (STIP) description for the Phase 2 project was expanded to include the waterline which will allow federal/state funds to be used in the construction of the waterline.
- A meeting was held with BLM on November 12, 2015 to discuss the ROW for phase 2 and was advised that a separate application must be submitted for pipeline right of ways. This support resolution is specific to the waterline. Future applications will include a sewerline right of way and an aerial right of way for electric transmission.
- The environmental document prepared for the surface right of way will include reference to the concurrent construction of the waterline with the roadway construction and the future develop of sewer and electric utilities. Inclusion of the future utility development in the document now potentially reduces the time required for BLM utility right of way approvals in the future.

## **PROCUREMENT / PURCHASING (if applicable)**

- Not Applicable

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

- The City is exempt from the BLM ROW fees.

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**SUPPORT DOCUMENTS:** Resolution 2015-977

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2015-977 Supporting the Application to BLM for Waterline ROW for the East Aztec Arterial.

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**RESOLUTION 2015-977**  
**COMMISSION SUPPORT FOR APPLICATION TO BLM FOR WATERLINE RIGHT OF WAY ON FEDERAL LANDS FOR EAST AZTEC ARTERIAL**

**WHEREAS**, the City of Aztec is developing the East Aztec Arterial to provide traffic relief around the downtown area of Aztec connecting to US Highway 550 on the south side of Aztec, proceeding in an northeasterly direction to intersect with NM173; and

**WHEREAS**, the East Aztec Arterial will provide economic development opportunities benefiting the City, San Juan County and the State of New Mexico; and

**WHEREAS**, the route of the East Aztec Arterial will be constructed on a combination of private, public (federal and state) and city properties and

**WHEREAS**, the City will construct a 10" waterline along the East Arterial for future development; and

**WHEREAS**, it is necessary for the City to secure the necessary right of ways to finalize funding and proceed with final design and phased construction as funding is available; and

**NOW, THEREFORE, BE IT RESOLVED** that the Aztec City Commission supports the amended application for Water Distribution Facilities on Federal Lands specific to Right of Way requirements for the East Aztec Arterial.

**ADOPTED AND APPROVED** this 17<sup>th</sup> day of November, 2015

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

Attest:

\_\_\_\_\_  
Karla H. Saylor, City Clerk

# Staff Summary Report

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<b>MEETING DATE:</b>	November 17, 2015
<b>AGENDA ITEM:</b>	XII. BUSINESS ITEM (A)
<b>AGENDA TITLE:</b>	Final Adoption of 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 Final Adoption Adopt of 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.

Intent to adopt Ordinance 2015-447 was passed at the October 13, 2015 commission meeting.

No new changes have been done since the Intent to Approve.

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<b>SUPPORT DOCUMENTS:</b>	<ul style="list-style-type: none"><li>· Ordinance 2015-447</li><li>· Safety Policy Revisions</li></ul>
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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Final Adoption of 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: \_\_\_\_\_

## 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	Field 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:** November 17, 2015  
**AGENDA ITEM:** XII. BUSINESS ITEM (B)  
**AGENDA TITLE:** Final Adoption of Ordinance 2015-448 Amending Chapter 17, Section 17-1 Personnel Policy

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**ACTION REQUESTED BY:** Commission  
**ACTION REQUESTED:** Approve Final Adoption of 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.

Intent to adopt Ordinance 2015-448 was passed at the October 13, 2015 commission meeting.

No new changes have been done since the Intent to Approve.

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**SUPPORT DOCUMENTS:**

- Ordinance 2015-448
- Revisions to Personnel Policy

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Final Adoption of Ordinance 2015-448 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:** November 17, 2015  
**AGENDA ITEM:** XII. Business Item (C)  
**AGENDA TITLE:** Intent to Adopt Ordinance 2015-449 Amending Section 16-15 Golf Course Fees

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**ACTION REQUESTED BY:** Steve Mueller  
**ACTION REQUESTED:** Approve Intent to Adopt Ordinance 2015-449 Amending Section 16-15 Golf Course Fees  
**SUMMARY BY:** Steve Mueller

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## **PROJECT DESCRIPTION / FACTS**

- Due to the nature of the Golf Course business, staff has determined that adjustment of fees via ordinance can be problematic.
- As an example, to implement a promotional event fee or a change to fee structures, it takes approximately 6 weeks before a new fee can be established with the current ordinance approval process.
- Staff is recommending that golf course fees be added or amended via Resolution, expediting Commission approval and allowing the Golf Course to be more competitive with other local golf courses and have the ability to institute special and promotional event fees in a more timely manner.

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**SUPPORT DOCUMENTS:** Ordinance 2015-449

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**DEPARTMENT'S RECOMMENDED MOTION:**  
Move to Approve Intent to Adopt Ordinance 2015-449 Amending Section 16-15 Golf Course Fees

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**City of Aztec  
Ordinance 2015-449  
Amending Section 16-15 Golf Course Fees**

**Sec. 16-15. Golf Course Fees.**

1. In General.

- 1) Memberships are for 1 year from the date of purchase.
- 2) Must be 16 or older to drive a cart.
- 3) No private carts allowed on golf course.
- 4) Fees are subject to New Mexico Gross Receipts Tax.

2. Annual Memberships.

<i>Membership</i>	<i>Green Fees</i>	<i>Cart Fees</i>
<del>Regular Adult (19 to 54 years old)</del>	<del>\$500</del>	<del>\$500</del>
<del>Senior (55 or older)</del>	<del>\$400</del>	<del>\$500</del>
<del>Junior (18 or younger)</del>	<del>\$100</del>	<del>\$500</del>
<del>Government or School Employee</del>	<del>\$250</del>	<del>\$250</del>
<del>+1 Family Member (with purchase of Regular Adult, Senior, or Govt./School Employee)</del>	<del>\$250</del>	<del>\$250</del>

Established through Resolution and approval by City Commission.

3. Daily Rates.

<i>Round</i>	<i>Green Fees</i>	<i>Cart Fees</i>
<del>9 Holes</del>	<del>\$10</del>	<del>\$5</del>
<del>18 Holes</del>	<del>\$20</del>	<del>\$5</del>

Established through Resolution and approval by City Commission.

4. Associated Fees.

	<i>Fees</i>
<del>Cart Rider Fee</del>	<del>\$5 per round</del>
<del>Rental Clubs</del>	<del>\$12.75 (includes tax)</del>
<del>Pull Carts</del>	<del>\$2.25 (includes tax)</del>
<del>Range Balls</del>	<del>\$5.25 (includes tax) \$8.50 (includes tax)</del>

Established through Resolution and approval by City Commission.

5. Tournament Fees.

- ~~1) \$30 per player.~~
- ~~2) Require \$500 deposit by organization/entity conducting the tournament.~~
- ~~3) The City will invoice tournament sponsor after event for remaining balance.~~

Established through Resolution and approval by City Commission.

6. League Play.

- ~~1) All league play will include a round of 9 holes of golf.~~
- ~~2) Members pay \$5 per round.~~
- ~~3) Non-members pay \$15 per round.~~

Established through Resolution and approval by City Commission.

7. Special Events.

	<i>Fees</i>
Patio	To Be Negotiated
Patio and Grill Equipment	To Be Negotiated
Cart Rental Off Premise for Special Events	\$50.00 per 24 hour period

(Ord. 2015-444, eff. 2015-Sept -03; Ord. 2015-442, eff. 2015-Apr-01)

8. Promotional Fees.

Established through Resolution and approval by City Commission.

**PASSED, APPROVED, SIGNED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2015.

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

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

ATTEST:

\_\_\_\_\_  
Karla Saylor, 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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**MEETING DATE:** November 17, 2015  
**AGENDA ITEM:** XIII. LAND USE HEARING (A)  
**AGENDA TITLE:** 2015 Mankin Land Group-New Drill Site Permit

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**ACTION REQUESTED BY:** BP American Production Company  
200 Energy Ct.  
Farmington, NM 87401  
c/o Mankin Land Company LLC  
15 Road 3120  
Aztec, NM 87410  
Mike Mankin, Representative

**ACTION REQUESTED:** 2015-141 City of Aztec Oil & Gas Application for a new gas well to be dug in NE4 Section 11, T-30-N, R-11-W 1719' FNL – 1981' FEL

**SUMMARY BY:** William M. Homka AICP, CFM

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## PROJECT DESCRIPTION / FACTS

This request seeks approval to drill a new gas well to be installed at the above location. The site is situated within Aztec's municipal limits on federal land managed by the BLM (Bureau of Land Management). The proposed site is in the city's eastern area but north of Navajo Dam Road. The technical location can be derived from the form submitted by the applicant titled 'State of New Mexico Energy, Minerals & Natural Resources Department.....Well Location and Acreage Dedication Plat.'

The well site information is as follows:

Existing Pad Area:	NA
New Pad Area:	2.757 acres
Total Pad Area:	3.220 acres
Building Info:	N/A
Floodplain:	No
Arroyo:	See plat
Access:	Generally Via Calloway Road using existing and then newly constructed access roads.

The application was submitted by the Mankin Land Company LLC on behalf of BP America Production Company, located at 200 Energy Court in Farmington, NM. The information submitted with the application adheres to Chapter 15 'Oil and Gas Wells' adopted as Chapter 15 in Aztec's City Code (August, 2013). The application includes the Application Checklist which highlights all of the requirements set forth in the city code. All required documentation was submitted and verified by Community Development. Not all application materials are attached to this report; however they may be referenced or cited. In any case the information is retained within the 2015-141 file and available for inspection upon written public records request.

The submittal indicates the well location is 674 feet from the nearest residential property line. As such the public notice requirement of notifying adjacent property owners within a 400 foot radius does not apply. There are no other owners; therefore the surface owner act and its requirements are not applicable to this application's process. The well is also 762 feet from the nearest well. The application states the project timeline is a total of 15 days. The information in this paragraph was obtained from the application to drill submitted to the U.S. Department of Interior of Land Management which is attached to this report.

The proposed location is on undisturbed land. Access to the location will utilize existing roads and one new lease road. A road maintenance plan is part of the application. The new well will be from Calloway Road, about 0.5 miles from its intersection with State Highway 173. The proposed well pad is 130 feet west of the proposed access road that will extend from other, existing service roads that extend off from the Calloway Road entry point. The new road is about 163 feet in length and will have a 15 foot width within a 30' right-of-way. During drilling and subsequent operations, all equipment and vehicles will be confined to the 15 foot wide driving surface. The proposed road right-of-way will create an additional 0.13 acres of new surface disturbance. The back slope of the driving surface will be re-vegetated. The mitigation plans submitted with the application include a Vegetation plan, dust abatement plan for roadway surfaces using water and in accordance with BLM written approval acquired before any other control measures.

Water for drilling and completion operations will be purchased from one or more of the following locations:

1. City of Aztec
2. City of Bloomfield
3. Hilltop #SJ-00077 managed by Western Refining, which derives supply from the Navajo Nation.

The analysis report titled '*Surface Use Plan of Operations*' prepared by Adkins Consulting Inc. of Durango, CO was prepared in September, 2015. Its contents include overviews and plans for existing roads, new roads, location of existing wells, location of existing and/or any proposed production facilities, location and types of water supply, construction materials, methods for handling waste, ancillary facilities, well site layout, plans for surface reclamation, surface ownership and other information. The full body of the report is maintained in the application's file.

In review of the application it does not appear that a compressor is proposed for this well. Considering the nature of the operations and past applications, it is probably wise to expect that a well without a compressor might need one in the future. Therefore this analysis suggests the standard requirements be included as condition for approval in the event a compressor is added at a future time. The standards include a hospital grade muffler be installed to reduce noise emissions, painting the equipment to match the surrounding vegetation, and minimizing the height to blend in with the site area's visual profile/horizontal plane.

Aztec and surrounding areas have been subject to heavy rains and flooding in recent months. There have been issues with the location of some development projects, such as subdivisions, new roadways, and even well operation developments. Though the review process is the same for all wells, it seems imperative that this report includes a discussion of the staff review for the location of any waterways, arroyos, and other natural geographic features. The nearest arroyo identified on Aztecs GIS is identified as the Hampton Arroyo which is approximately 3,300 linear

feet or more to the south of this development. We know the terrain is NOT linear or 'flat' and the probability of tributary crevices and other drainage pathways are around the site. It is important for the development to consider these drainage ways in the facility's storm water management and erosion plan and appropriate design be installed as necessary.

Although the application states that an on-site meeting has already occurred with the applicant and BLM representatives, Community Development requested a site visit from the Mankin Land Company. Mike Mankin and William Homka visited the site. The visit was to discuss drainage and to gain a better perspective and understanding about how the storm water management and erosion plans will keep this development from impacting any nearby development.

After a review of the Aztec City Code requirements contained in Chapter 15 of the Oil and gas Wells standards, staff finds the application to be complete and complies with the submission requirements. Staff does not object to this application, 2015-141 a Request for a New Drill Gas Well at the prescribed location. The recommendation for approval will be contingent on the development adhering to all of the processes and performance measures described in the Surface Use Plan of Operations, Surface Reclamation Plan, and all other regulations whether they be federal, state or local in origin. The approval is also conditioned upon the development maintaining compliance with the industry's own Standard Best Management Practices.

#### **FINDINGS OF FACT**

1. The proposed project is situated in the City of Aztec on BLM land;
2. The closest residence is nearly 650' away and outside of the public notice requirements
3. Surface Owners Act does not apply to this project as land is owned by Federal government;
4. All required application materials have been included with the submittal and clearly position the project for approval;
5. The contractor and operator maintain a certificate of insurance;
6. The development must adhere to all of the processes and performance measures described in submitted documents, including the Surface Use Plan of Operations and Surface Reclamation Plan, as well as all other applicable regulations promulgated by federal, state or local jurisdictions;
7. The project must maintain compliance with the industry Standard Best Management Practices;
8. The equipment shall be painted to blend / match the surrounding area;
9. Equipment should not exceed the area's visual profile/horizontal plane;
10. A complete copy of the application containing all of the required reports and this submittal is available for review in the Community Development Office, and;
11. Should the well require a compressor to be added at a future time it must include hospital grade muffler and be enclosed to reduce noise emissions.

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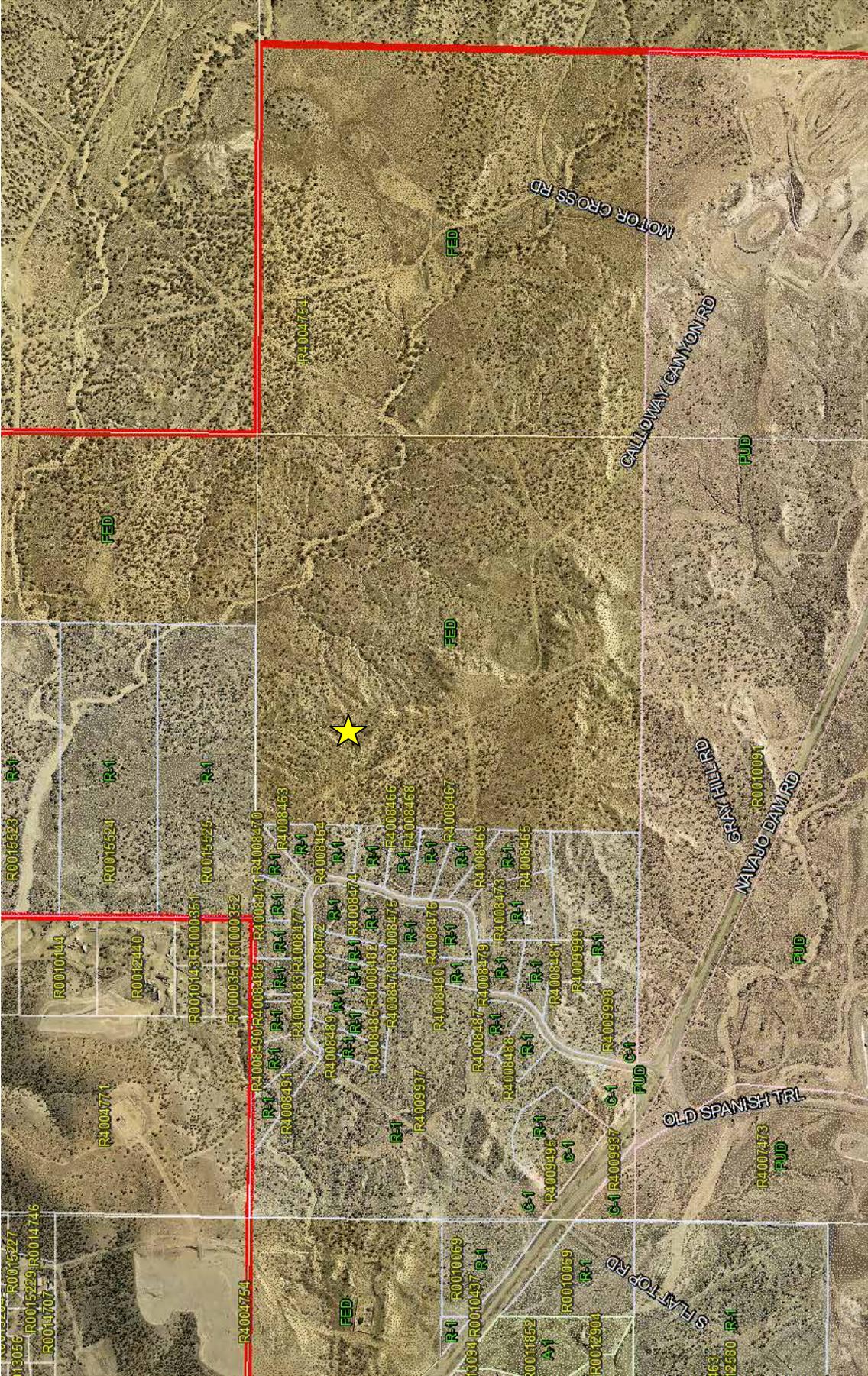
**SUPPORT DOCUMENTS:**

1. Application
  - a. Maps prepared by applicant
  - b. Descriptions of roadways and proposed access
  - c. Letter from well owner recognizing Mankin Land Company LLC as authorized representative
  - d. U.S. Dept. Interior Drill Permit Application
  - e. State of New Mexico Well Location and Acreage Dedication Plat
  - f. Surveyors Certificate
  - g. Maps prepared by applicant
  - h. Various maps and other documenttation
2. Approximate Location/Vicinity Map
3. Aerial indicating nearest arroyo

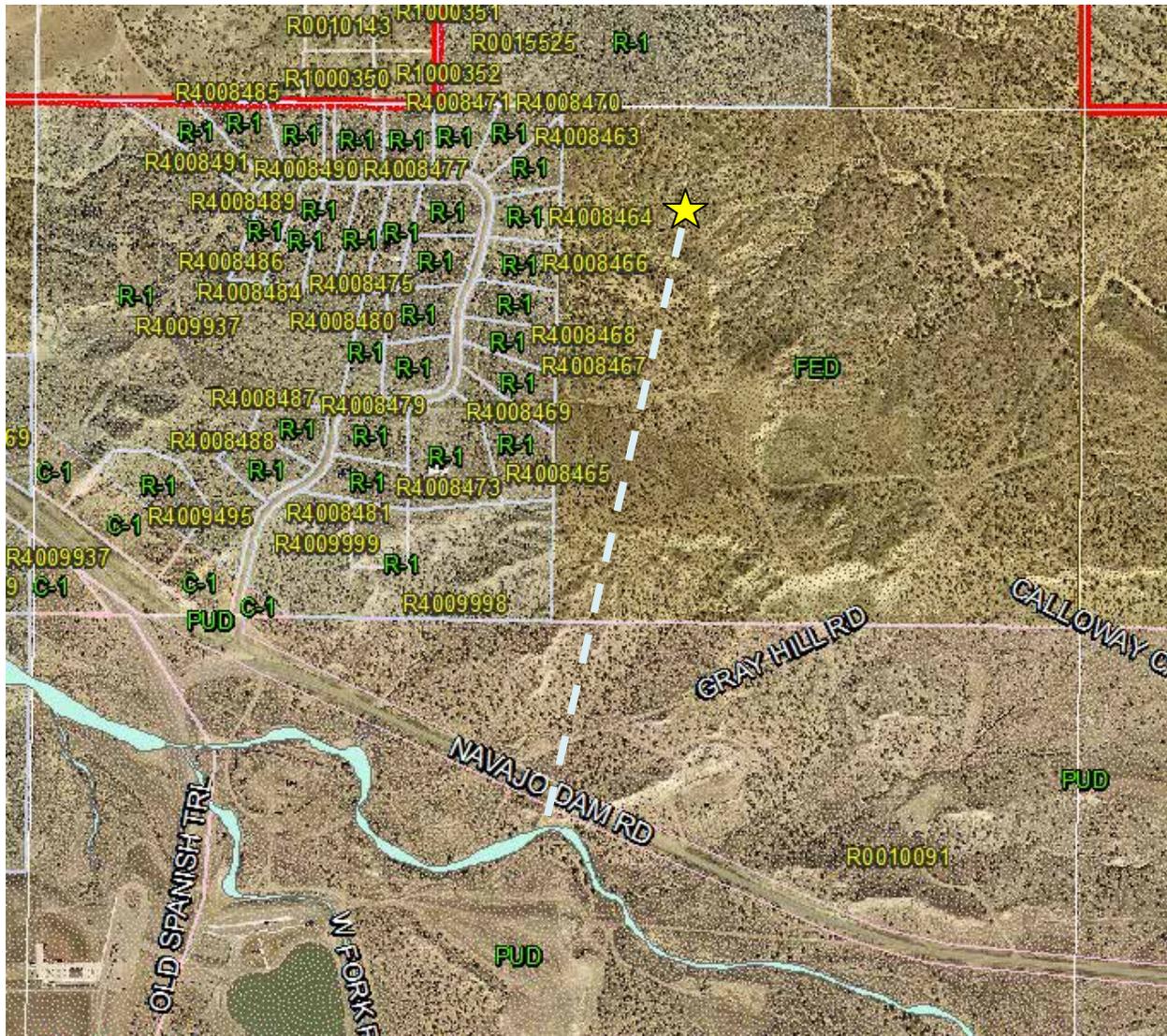
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**DEPARTMENT'S RECOMMENDED MOTION:** Move To Approve 2015-141, an Oil & Gas Well application submitted by the Mankin Land Company, LLC on behalf of BP America Production Company for permission to construct a new well at the location indicated per Findings of Fact 1 Through 11.

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★ APPROXIMATE LOCATION/VICINITY MAP  
2015-141 NEW OIL WELL



★ APPROXIMATE LOCATION/VICINITY MAP  
DEPICTING THE NEAREST IDENTIFIED ARROYO  
2015-141 NEW OIL WELL



## CITY OF AZTEC OIL & GAS APPLICATION

(APPLICATIONS ARE VALID FOR 90 DAYS FROM DATE OF SUBMISSION)  
**NEW WELL SITES AND MAJOR MAINTENANCE WORK REQUIRE COMMISSION APPROVAL; APPLICATIONS FOR SUCH APPROVAL MUST BE SUBMITTED A MINIMUM OF 21 DAYS BEFORE THE SCHEDULED COMMISSION MEETING.**

APPLICANT CONTACT INFORMATION	
Name of Operator:	BP America Production Company
Address:	200 Energy Court, Farmington NM 87401
Contact Name:	Mike L Mankin
Phone:	505-634-6393
Email:	mgcattle@yahoo.com
Name of Off-set Lease/Owner(s):	N/A
WELL INFORMATION	
Name:	Storey B HS Le # 1H
API #:	To Be Assigned
Type of Lease:	Federal
Lease Number:	SF 078138A
Depth:	3500' Vertical / 3100' Horizontal
Formation:	Basin Fruitland Coal
Location:	NE4, Sec 11, T30N, R10W / 1719' FNL & 1987' FEZ
Type of Work:	New Drill
Contractor:	TBA
Proposed Work Dates:	Upon Permit Approval
WELL SITE INFORMATION	
Address:	
Tax ID:	Parcel Size (acres):
Zone District:	Current Use:
Flood Plain:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO SFHA Zone:
Well Pad Area (sqft):	Existing Pad Area: None
	New Pad/ Expansion: 2.757 acres
	Total Pad Area: 3.220 acres
Setbacks:	Building: N/A
	Arroyo: See Provided Plat
<b>PERMIT FEES ARE DUE AT TIME OF APPLICATION;</b> additional fees may be assessed at time of permit approval.	

THIS IS AN APPLICATION	
AN OFFICIAL LAND USE PERMIT WILL BE ISSUED BY THE CITY OF AZTEC ONCE THIS APPLICATION IS REVIEWED AND APPROVED	
CITY OF AZTEC USE ONLY	
PERMIT FEES	
Admin. Fee	\$ 10.-
Permit Fee	\$ 500.-
Electric Fees	\$
<b>GRAND TOTAL</b>	<b>\$ 510.-</b>
THE FOLLOWING ITEMS MUST BE COMPLETED BY APPLICANT ONCE LAND USE PERMIT IS ISSUED	
Arrange City Utility Inspections/Connections	_____
County Building Permit	_____
One Call (811)	_____
Install Address Numbers	_____
CITY COMMENTS	
Meets SB:	_____
Meets Height:	_____
Zone Compliance:	_____
Visual/Weed Mit.:	_____
Noise Mit.:	_____
Fencing:	_____
Dust/Access Mit.:	_____
Wetlands:	_____
EPA CGP:	_____
NM OCD:	_____
USACE:	_____



WELL SITE INFORMATION, Cont.				
Compressors:		No.	Horse Power	Gas/ Electric
	Existing:			
	New:	1	400	Gas
	Total:	1		

Features	Existing	New	Removed
Meter House:		1	
Separators:		1	
Valves:			
Evaporative Tanks:		1	2 FT
Production Tanks:		1	400 BBL
Reserve Pits:			NO
Pump Jacks:		1	
Sound Enclosures:			NO

**ATTACHED DOCUMENTATION ( AS REQUIRED)**  
*Consult the Community Development Dept. for Guidance*

DOCUMENTATION ITEMS	YES	NO	N/A
Owner Verification	X		
Detailed Site Map	X		
Weed/Vegetation Plan	X		
Electrical Load Calculation			X
Visual Mitigation Plan	X		
Wildlife Mitigation Plan	X		
Noise Mitigation Plan	X		
Dust/Access Mitigation Plan	X		
Certificate of Insurance		ON File	
Copy of Original Lease	X		
Surface Damage/ROW Agreement			X
APD Sundry Notice	X		
C-144			X
Elevation Certificate	X		
Land Use Hearing Application (Variance, etc.)			X
Business License Application			X

CITY STAFF APPROVAL	
Community Development	_____
Electric Dept.	_____
Utility Office	_____
Public Works Dept.	_____
Floodplain Management	_____
Storm Water Mgmt.	_____
Parks and Recreation	_____
Addressing	_____
Police Dept.	_____
Fire Dept.	_____
City Commission	_____

**APPLICANT SIGNATURE**

I, \_\_\_\_\_,  
 representing \_\_\_\_\_,  
 hereby certify that I have read this application and hereby dispose and state under penalty of perjury that all statements, proposals, sketches, and/or plans submitted with this application are true and correct and that I shall adhere to the Municipal Regulations of the City of Aztec.

Signature: *Michael Y. ...*  
 Date: 11/23/15

TY OF AZTEC  
 11/02/2015 16:50 CD

CM DEV ADMIN FEE (ALL PERMITS)

U-A207260  
 FMSD CM DEV ADMIN FEE (ALL PE 10.00  
 FMSD CM DEV OIL & GAS PERMITS 500.00

PAYMENT RECEIVED  
 CHECK: 5593  
 TOTAL

AMOUNT  
 510.00  
 510.00



2015-141



**BP America Production Company**  
200 Energy Court  
Farmington, NM 87401  
Phone: (505) 326-9200

October 23, 2015

City of Aztec  
Community Development Director  
Bill Homka  
201 W. Chaco St.  
Aztec, NM 87410

Re: City of Aztec Oil & Gas Permit Application  
Mankin Land Company LLC – Authority to represent BP

Dear Bill:

Please be advised that Mankin Land Company LLC serves as agent for BP and as such, owner Mike Mankin, his agents and employees, are authorized to represent BP in regards to applications submitted to the City of Aztec

If you have any question concerning this letter, please call me at 505-326-9214.

Sincerely,

Charlie Davis  
Surface Land Negotiator  
BP America Production Company

CC: Mike Mankin



***Mankin Land Company, LLC***  
***15 Rd 3120***  
***Aztec, NM 87410***  
***(505) 634-6393***

October 23, 2019

City Of Aztec  
Community Development Director  
Attn: Mr. Bill Homka  
201 West Chaco Street  
Aztec, NM 87410

Re: City of Aztec Oil & Gas Application  
BP America Production Company  
Storey B LS 6 #1H  
NE4 of Section 11, T30N, R11W  
San Juan County, NM

Dear Bill,

Enclosed you will find the above referenced application and a check in the amount of \$510.00 to cover the associated Administrative and Permit fees. Please call if you have any questions.

Respectfully,



Mike L. Mankin  
Authorized Agent to BP America Production Company  
Mankin Land Company, LLC



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

APPLICATION FOR PERMIT TO DRILL OR REENTER

5. Lease Serial No.  
NMSF078138A

6. If Indian, Allottee or Tribe Name

1a. Type of Work:  DRILL  REENTER

**CONFIDENTIAL**

7. If Unit or CA Agreement, Name and No.

1b. Type of Well:  Oil Well  Gas Well  Other  Single Zone  Multiple Zone

8. Lease Name and Well No.  
STOREY B LS 6 1H

2. Name of Operator  
BP AMERICA PRODUCTION COMPANY  
Contact: TOYA COLVIN  
Toya.Colvin@bp.com

9. API Well No.

3a. Address  
737 NORTH ELDRIDGE PARKWAY 12.181A  
HOUSTON, TX 77079

3b. Phone No. (include area code)  
Ph: 281-366-7148

10. Field and Pool, or Exploratory  
BASIN FRUITLAND COAL

4. Location of Well (Report location clearly and in accordance with any State requirements. \*)

At surface [REDACTED] n  
At proposed prod. zone [REDACTED]

11. Sec., T., R., M., or Blk. and Survey or Area  
Sec 11 T30N R11W Mer

14. Distance in miles and direction from nearest town or post office\*  
WELL IS 2.5 MILES SOUTHWEST OF AZTEC, NM.

12. County or Parish  
SAN JUAN

13. State  
NM

15. Distance from proposed location to nearest property or lease line, ft. (Also to nearest drig. unit line, if any)  
WELL IS 674 FEET FROM THE NEAREST UNIT/LEASE LINE.

16. No. of Acres in Lease  
2394

17. Spacing Unit dedicated to this well  
320.00

18. Distance from proposed location to nearest well, drilling, completed, applied for, on this lease, ft.  
WELL IS 762 FEET FROM THE NEAREST WELL 5300BY(FC)

19. Proposed Depth  
2394 TVD

20. BLM/BIA Bond No. on file  
WY2924

21. Elevations (Show whether DF, KB, RT, GL, etc.)  
5936 GL

22. Approximate date work will start  
11/01/2015

23. Estimated duration  
15 DAYS

24. Attachments

The following, completed in accordance with the requirements of Onshore Oil and Gas Order No. 1, shall be attached to this form:

1. Well plat certified by a registered surveyor.
2. A Drilling Plan.
3. A Surface Use Plan (if the location is on National Forest System Lands, the SUPO shall be filed with the appropriate Forest Service Office).
4. Bond to cover the operations unless covered by an existing bond on file (see Item 20 above).
5. Operator certification
6. Such other site specific information and/or plans as may be required by the authorized officer.

25. Signature  
(Electronic Submission)

Name (Printed/Typed)  
TOYA COLVIN Ph: 281-366-7148

Date  
08/26/2015

Title  
REGULATORY ANALYST

Approved by (Signature)

Name (Printed/Typed)

Date

Title

Office

Application approval does not warrant or certify the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.  
Conditions of approval, if any, are attached.

Title 18 U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Additional Operator Remarks (see next page)

Electronic Submission #314254 verified by the BLM Well Information System  
For BP AMERICA PRODUCTION COMPANY, sent to the Farmington



**District I**  
1625 N. French Dr., Hobbs, NM 88240  
Phone: (575) 393-6161 Fax: (575) 393-0720

**District II**  
811 S. First St., Artesia, NM 88210  
Phone: (575) 748-1283 Fax: (575) 748-9720

**District III**  
1000 Rio Brazos Road, Aztec, NM 87410  
Phone: (505) 334-6178 Fax: (505) 334-6170

**District IV**  
1220 S. St. Francis Dr., Santa Fe, NM 87505  
Phone: (505) 476-3460 Fax: (505) 476-3462

State of New Mexico  
Energy, Minerals & Natural Resources Department  
**OIL CONSERVATION DIVISION**  
1220 South St. Francis Dr.  
Santa Fe, NM 87505

Form C-102  
Revised August 1, 2011  
Submit one copy to appropriate  
District Office

AMENDED REPORT

**WELL LOCATION AND ACREAGE DEDICATION PLAT**

<sup>1</sup> API Number		<sup>2</sup> Pool Code 71629		<sup>3</sup> Pool Name Basin Fruitland Coal	
<sup>4</sup> Property Code 001136		<sup>5</sup> Property Name Storey B LS 6			<sup>6</sup> Well Number 1H
<sup>7</sup> GRID No. 000778		<sup>8</sup> Operator Name BP America Production Company			<sup>9</sup> Elevation 5936

<sup>10</sup> Surface Location

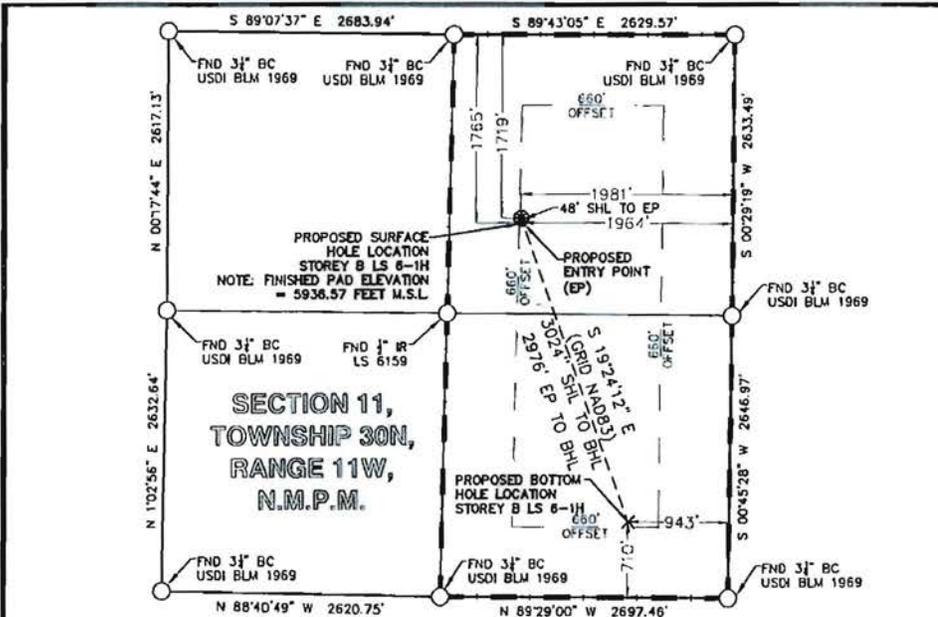
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
G	11	30N	11W		1719	North	1981	East	San Juan

<sup>11</sup> Bottom Hole Location If Different From Surface

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
P	11	30N	11W		710	South	943	East	San Juan

<sup>12</sup> Dedicated Acres 320	<sup>13</sup> Joint or Infill	<sup>14</sup> Consolidation Code	<sup>15</sup> Order No.
--------------------------------------	-------------------------------	----------------------------------	-------------------------

No allowable will be assigned to this completion until all interests have been consolidated or a non-standard unit has been approved by the division.



**LEGEND**  
FOUND MONUMENT O  
PROPOSED SURFACE HOLE LOCATION ⊗  
PROPOSED BOTTOM HOLE LOCATION X

STOREY B LS 6-1H	NWZ NAD'83	NAD'83	TIES
PROPOSED SURFACE HOLE LOCATION (SHL)	N (Y) = 2,121,057.66' E (X) = 2,686,544.58'	LAT. = 36.82887854°N LON. = 107.95821179°W	FNL = 1719' FEL = 1981'
PROPOSED ENTRY POINT (EP)	N (Y) = 2,121,011.84' E (X) = 2,686,560.72'	LAT. = 36.82875274°N LON. = 107.95815644°W	FNL = 1765' FEL = 1964'
PROPOSED BOTTOM HOLE LOCATION (BHL)	N (Y) = 2,118,205.16' E (X) = 2,687,549.29'	LAT. = 36.82104683°N LON. = 107.95476640°W	FSL = 710' FEL = 943'

**" OPERATOR CERTIFICATION**  
*I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or unleased mineral interest in the land including the proposed bottom hole location or has a right to drill this well at this location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order, as before entered by the Division.*

Signature: *Toya Colvin* Date: *6/24/15*

Printed Name: **Toya Colvin**

Email Address: **Toya.Colvin@bp.com**

**"SURVEYOR CERTIFICATION**  
*I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.*

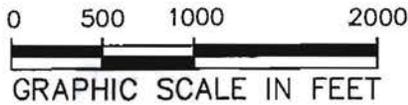
Date of Survey: *6-9-15*

Signature and Seal of Professional Surveyor: *Marshall W. Lindeen*

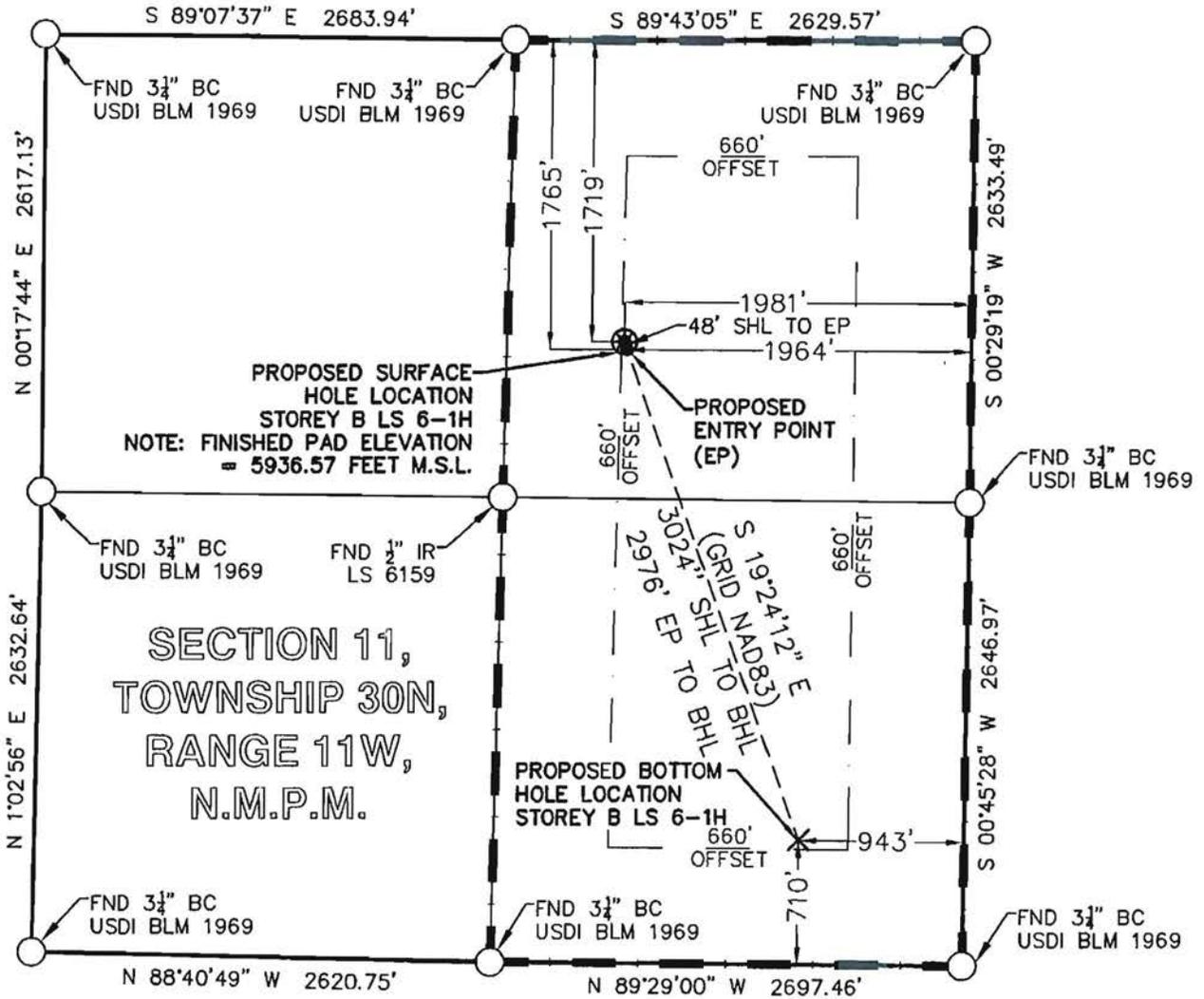
**17078**  
Certificate Number







**LEGEND**  
 FOUND MONUMENT ○  
 PROPOSED SURFACE HOLE LOCATION ●  
 PROPOSED BOTTOM HOLE LOCATION ×



STOREY B LS 6-1H	NMWS NAD'83	NAD'83	TIES
PROPOSED SURFACE HOLE LOCATION (SHL)	N (Y) = 2,121,057.66' E (X) = 2,686,544.58'	LAT. = 36.82887854°N LON. = 107.95821179°W	FNL = 1719' FEL = 1981'
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PROPOSED BOTTOM HOLE LOCATION (BHL)	N (Y) = 2,118,205.16' E (X) = 2,687,549.29'	LAT. = 36.82104683°N LON. = 107.95476640°W	FSL = 710' FEL = 943'

**SURVEY NOTES**

1. BEARING BASIS FOR THIS SURVEY IS BASED ON THE NORTH AMERICAN DATUM OF 1983, NEW MEXICO STATE PLANE COORDINATE SYSTEM, NEW MEXICO WEST, ZONE 3003.
2. ELEVATION BASIS FOR THIS SURVEY IS BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (GEOID12A).
3. SURVEYED IN THE FIELD ON 06/09/2015.
4. BEARINGS AND DISTANCE SHOWN ARE MEASURED IN THE FIELD UNLESS OTHERWISE NOTED.
5. ALL MEASURED DISTANCES SHOWN ARE GRID USING A COMBINED SCALE FACTOR 0.99963788.

**SURVEYOR'S CERTIFICATE**

I, MARSHALL LINDEEN, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE WELL LOCATION SHOWN ON THIS PLAT WAS PLOTTED FROM FIELD NOTES OF ACTUAL SURVEYS MADE BY ME OR UNDER MY SUPERVISION AND THAT THE SAME IS TRUE AND CORRECT TO THE BEST OF MY BELIEF.



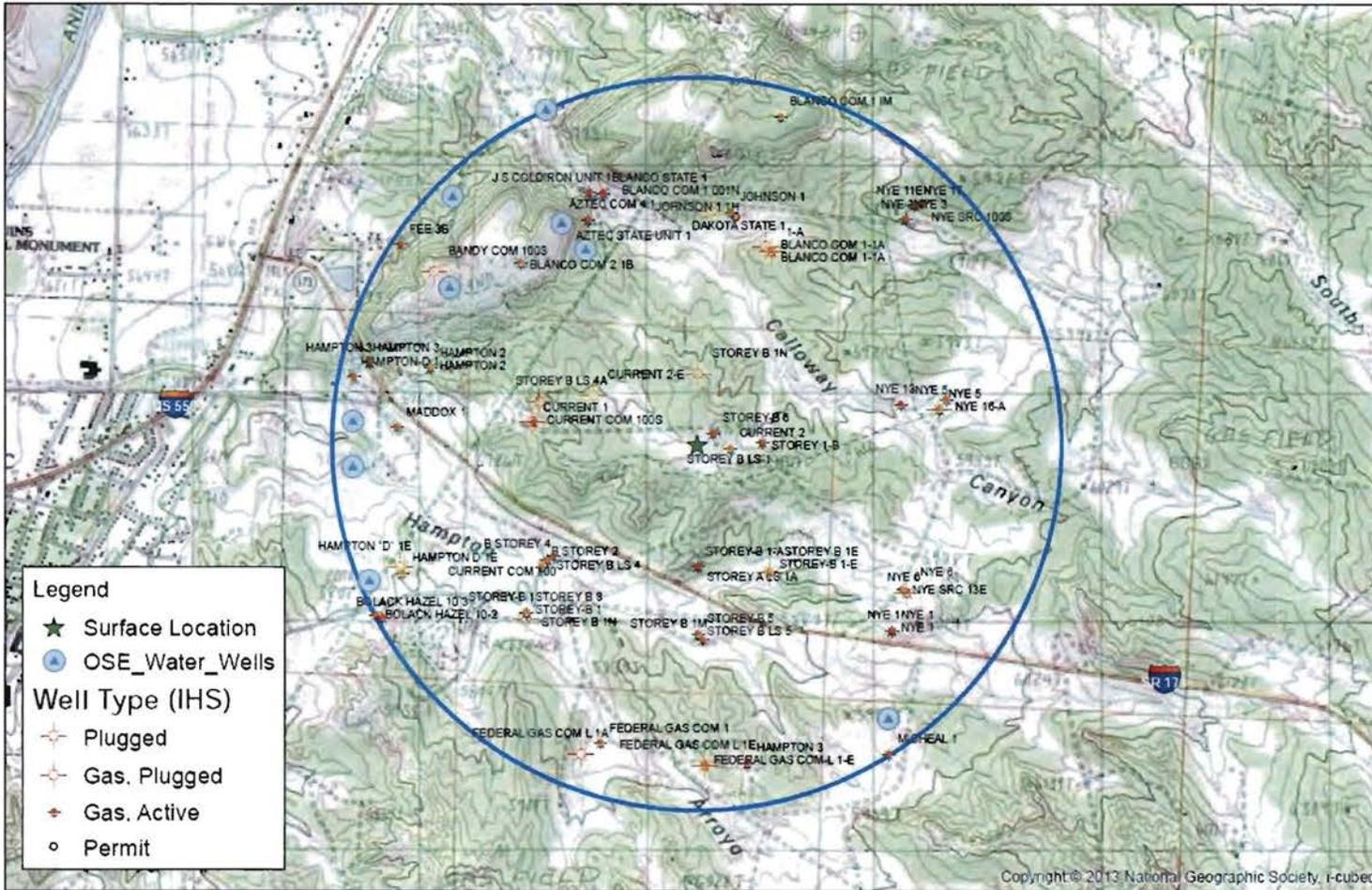
bp  
 BP AMERICA  
 PRODUCTION COMPANY  
 US LOWER 48 ONSHORE

WELL LOCATION PLAT

STOREY B LS 6-1H  
 PART OF  
 SECTION 11, TOWNSHIP 30N, RANGE 11W,  
 N.M.P.M.  
 SAN JUAN COUNTY, NEW MEXICO

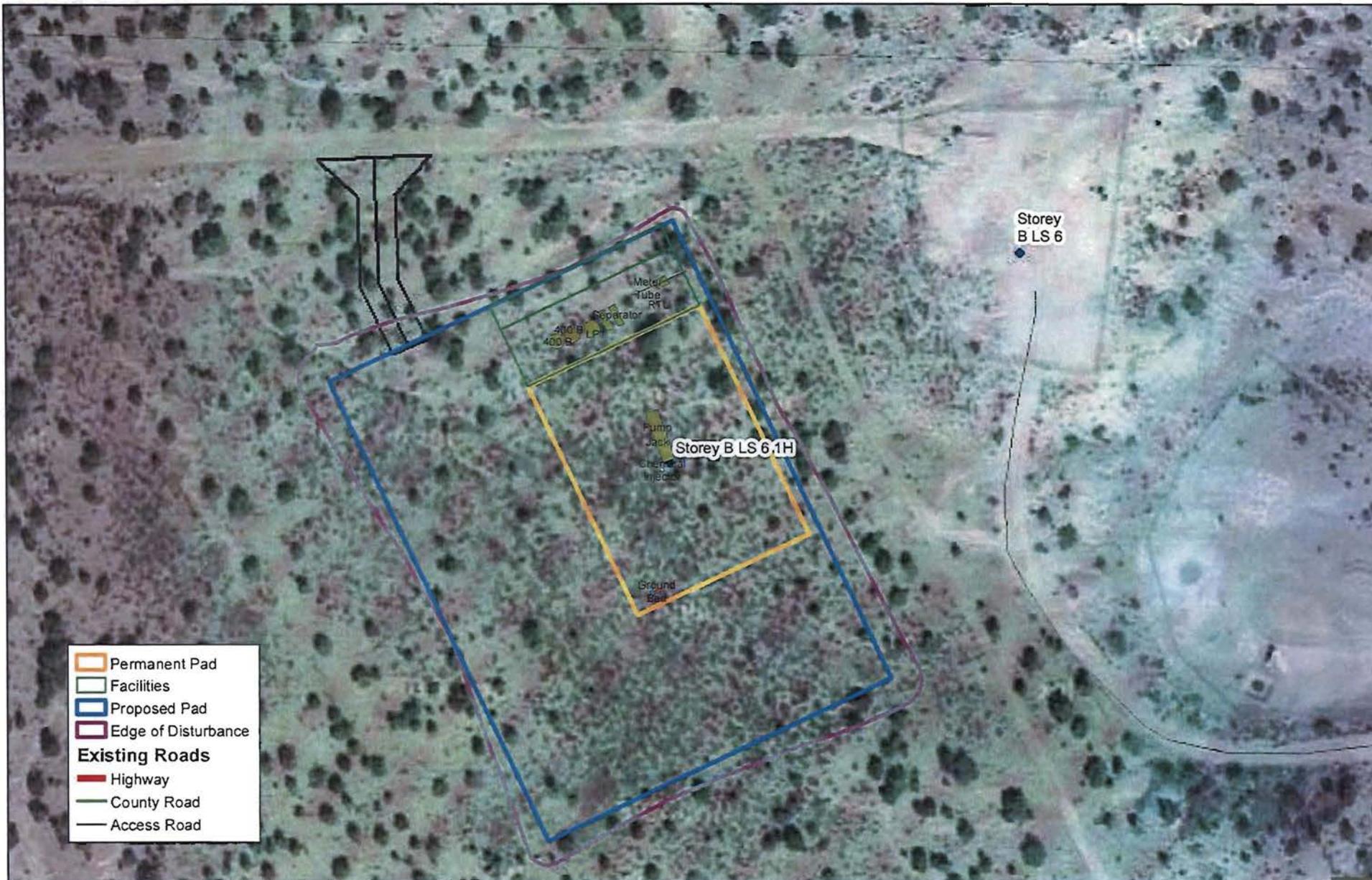
DRAWN BY CFW/RLM	CHECKED BY MWL	SCALE 1"=1000'	DATE 06/22/2015	SHEET 1 OF 1	REVISION
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1:24,000 0 2,400 4,800 Feet	 BP America San Juan South Farmington, NM	Storey B LS 6 1H	Exhibit 3
		Wells within one-mile	8/5/2015





- Permanent Pad
- Facilities
- Proposed Pad
- Edge of Disturbance
- Existing Roads**
- Highway
- County Road
- Access Road

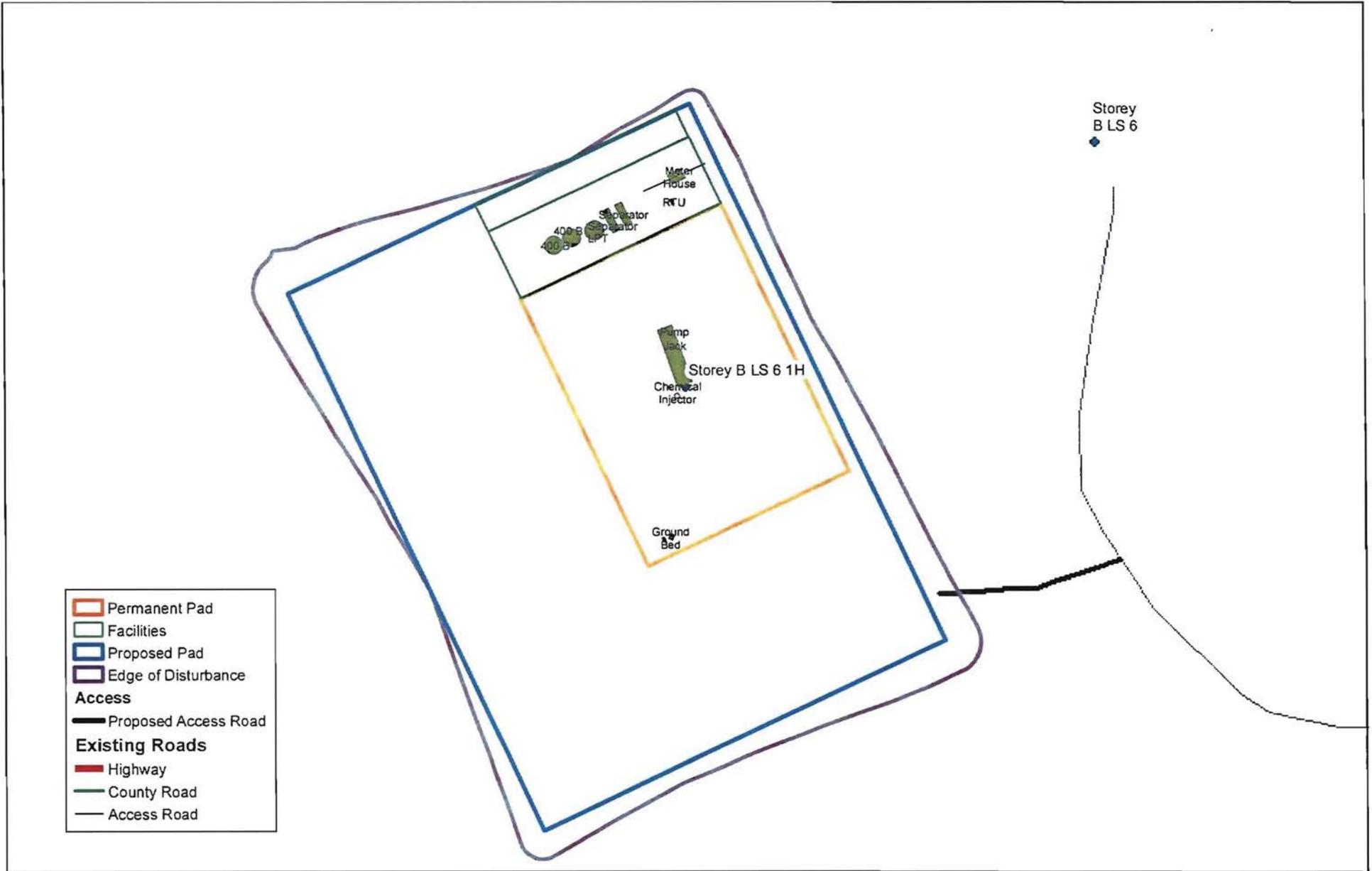


**BP America**  
 San Juan South  
 Farmington, NM

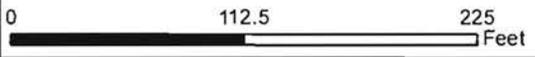
**Storey B LS 6 - 1H**  
**General Arrangement Design**

Sites
6/19/2015





1:1,103



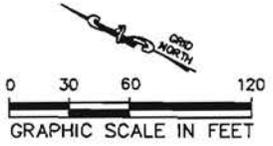
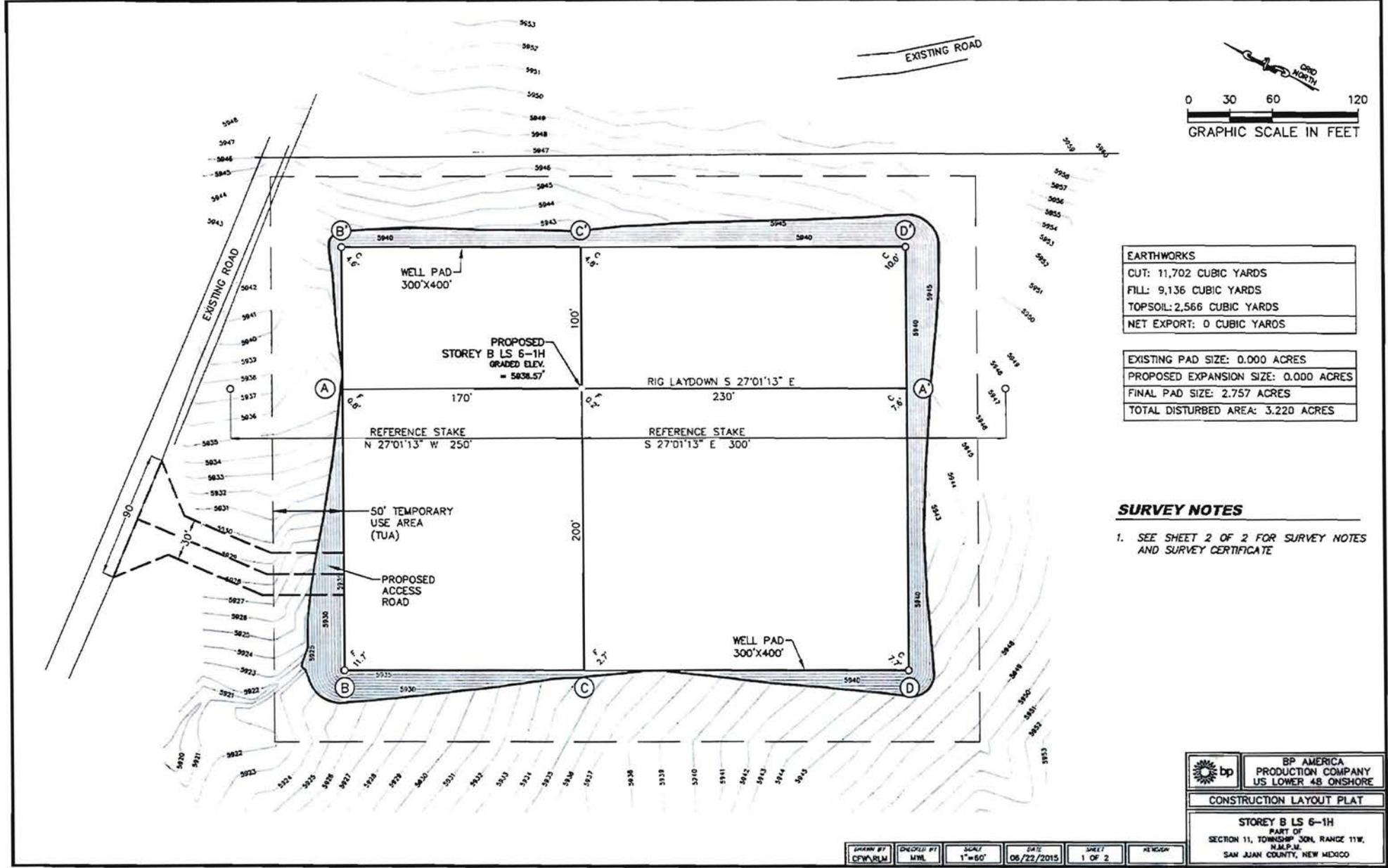
BP America  
 San Juan South  
 Farmington, NM



**Storey B LS 6 - 1H**  
 General Arrangement Design

Sites
6/16/2015





EARTHWORKS	
CUT:	11,702 CUBIC YARDS
FILL:	9,136 CUBIC YARDS
TOPSOIL:	2,566 CUBIC YARDS
NET EXPORT:	0 CUBIC YARDS

EXISTING PAD SIZE:	0.000 ACRES
PROPOSED EXPANSION SIZE:	0.000 ACRES
FINAL PAD SIZE:	2.757 ACRES
TOTAL DISTURBED AREA:	3.220 ACRES

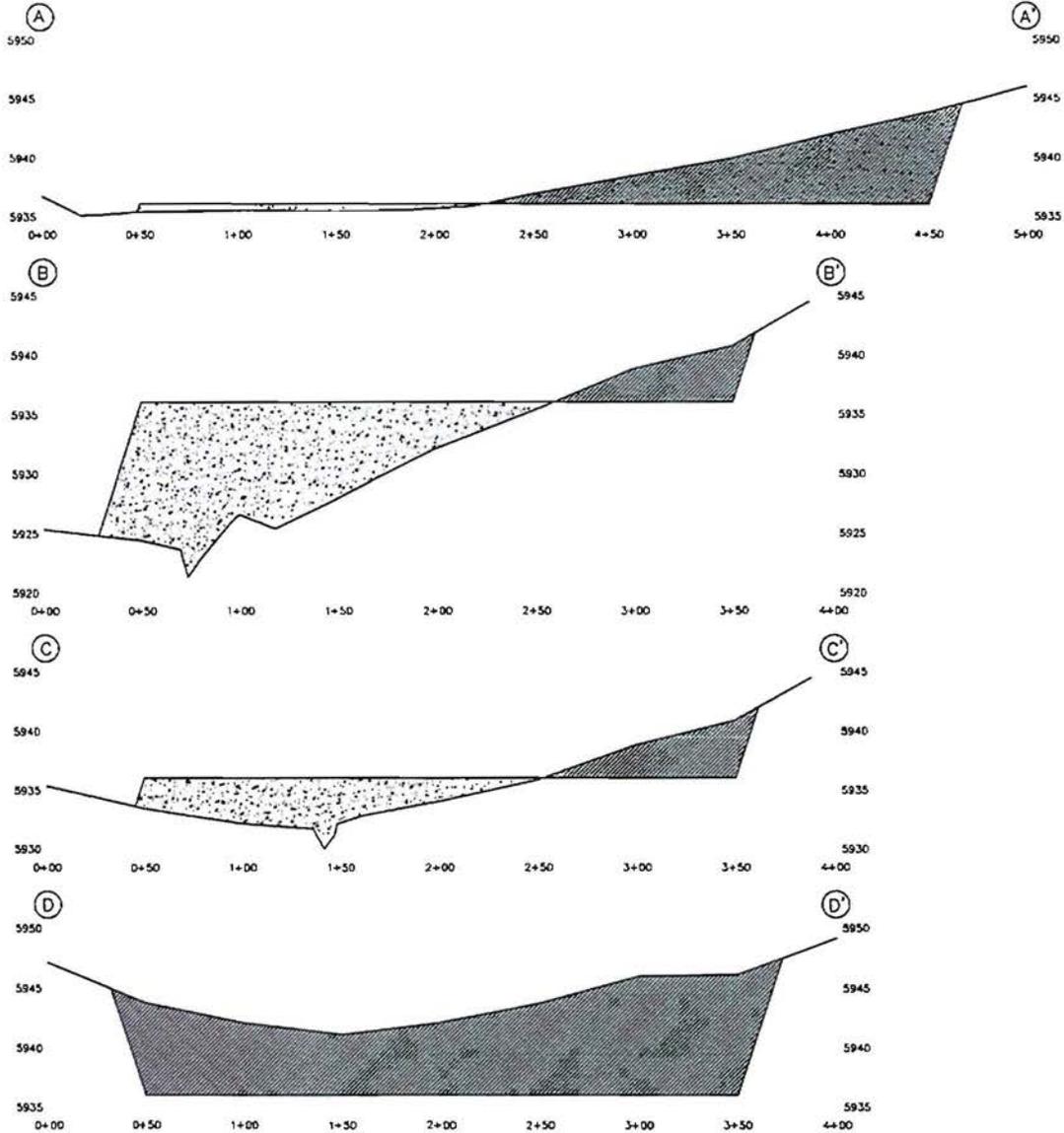
**SURVEY NOTES**

1. SEE SHEET 2 OF 2 FOR SURVEY NOTES AND SURVEY CERTIFICATE

	BP AMERICA PRODUCTION COMPANY US LOWER 48 ONSHORE
	<b>CONSTRUCTION LAYOUT PLAT</b>
STOREY B LS 6-1H PART OF SECTION 11, TOWNSHIP 30N, RANGE 11W, N.M.P.M. SAN JUAN COUNTY, NEW MEXICO	

DRAWN BY CFW/RUM	CHECKED BY MNL	SCALE 1"=60'	DATE 06/22/2015	SHEET 1 OF 2	REVISION
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LEGEND	
CUT	
FILL	

HORIZONTAL SCALE 1"=60'  
VERTICAL SCALE 1"=10'

**SURVEY NOTES**

1. BEARING BASIS FOR THIS SURVEY IS BASED ON THE NORTH AMERICAN DATUM OF 1983, NEW MEXICO STATE PLANE COORDINATE SYSTEM, WEST NEW MEXICO, ZONE 3003.
2. ELEVATION BASIS FOR THIS SURVEY IS BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (GEOID12A).
3. CONSTRUCTION SHALL ADHERE TO ALL LOCAL, STATE, AND FEDERAL REGULATIONS.
4. DETAILED CONSTRUCTION SPECIFICATIONS PROVIDED IN SCOPE OF WORK.

**SURVEYOR'S CERTIFICATE**

I, MARSHALL W. LINDEEN, BEING A PROFESSIONAL LAND SURVEYOR IN THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE SURVEY REPRESENTED BY THIS PLAT WAS MADE UNDER MY DIRECT SUPERVISION AND THAT THIS PLAT ACCURATELY REPRESENTS THIS SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.



	BP AMERICA PRODUCTION COMPANY US LOWER 48 ONSHORE
--	---

CROSS-SECTION PLAT

STOREY B LS 6-1H  
PART OF  
SECTION 11, TOWNSHIP 30N, RANGE 11W,  
N.M.P.M.  
SAN JUAN COUNTY, NEW MEXICO

DRAWN BY C/M/BLM	DESIGNED BY MM	SCALE N/A	DATE 06/22/2015	SHEET 2 OF 2	REVISION
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# Surface Use Plan of Operations

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## *Storey B LS 6 #1H*

*Basin Fruitland Coal*

*NE Qtr. of Sec 11, T30N.R11W; NMPM*

*San Juan County, NM*

*Lat: 36.82888*

*Long: -107.95821*

*Datum: NAD83*

**Prepared for:**  
BP America Production Company  
Farmington, New Mexico

**Prepared by:**  
Andrew Parker



Adkins Consulting, Inc.  
Environmental Permitting Services  
Durango, Colorado

September 23, 2015



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## *Exhibits*

- Exhibit 1: Access to Location
- Exhibit 2: New & Existing Access Roads Relative to Well Pad
- Exhibit 3: Wells Within 1-mile Radius
- Exhibit 4a: Pipeline Survey
- Exhibit 4b: Well Pad Survey Plat
- Exhibit 4c: Well Pad Cut/Fill
- Exhibit 5: Topsoil Stockpile and Stormwater BMPs.
- Exhibit 6: Drilling Rig Layout
- Exhibit 7: Proposed Interim Reclamation Area

## *Appendices*

- Appendix A: Road Maintenance Plan
- Appendix B: Surface Use Revegetation Plan



## *Introduction*

The following surface use plan of operations (SUPO) will be followed and carried out once the APD is approved by the BLM Farmington Field Office. No other disturbance will be created other than what was submitted in this surface use plan. If any other surface disturbance is needed after the APD is approved, a BLM approved sundry notice or right of way application will be acquired prior to any new surface disturbance.

Before any surface disturbance is created, stakes or flagging will be installed to mark boundaries of permitted areas of disturbance, including soil storage areas. As necessary, slope, grade, and other construction control stakes will be placed to ensure construction in accordance with the surface use plan. All boundary markers will be maintained in place until final construction cleanup is completed. If disturbance boundary markers are disturbed or knocked down, they will be replaced before construction proceeds.

## **A. Existing Roads**

1. The proposed location is on undisturbed land. Access to the location will utilize existing roads and one new lease road as shown on Exhibit 1. New roads are discussed in Section B. The Road Maintenance Plan is located in Appendix A.
2. Location Access: from the intersection of U.S. Highway 550 and State Highway 173 (1.1 miles north of Aztec, NM), proceed east on State Highway 173 for 1.3 miles. Turn northeast onto Calloway Road. Continue for 0.5 miles. The road curves north and continues for another 250 feet. At 250 feet, proceed west for 0.18 miles. The proposed access road begins at the access to BP America Storey B LS 6 gas well. The proposed well pad is 130 feet west of the proposed access road.
3. The operator will improve or maintain the existing roads in accordance with the BLM Gold Book Standards and BLM 9113-1 (Roads Design Handbook) and BLM 9113-2 (Roads Inventory and Condition Assessment Guidance and Instructions Handbook).
4. The operator will prevent and abate fugitive dust as needed, whether created by vehicular traffic, equipment operations, or wind events. BLM written approval will be acquired before application of surfactants, binding agents, or other dust suppression chemicals on BLM maintained roadways. Water application will be used for default dust control.

## **B. New or Reconstructed Roads**

A new access road is proposed to access the location and is discussed below. Exhibit 2 shows the location of proposed access road relative to the well pad.

1. The proposed access road is 163.49 feet in length.
2. Maximum width will be a 30-foot overall right-of-way with a 15 foot road running surface. During drilling and subsequent operations, all equipment and vehicles will be confined to the 15-foot driving surface. The backslope of the driving surface will be revegetated. The proposed access road right-of-way will create an additional 0.13 acres of new surface disturbance.
3. The maximum grade for the road improvements will not exceed 3 percent.
4. A culvert will be installed at the entrance to the well pad.
5. Construction materials and methods – see Item F.a. in this document.
6. The proposed access road will be designed, constructed, and maintained as a resource road in accordance with the BLM Gold Book Standards, BLM Handbook 9113-1 (Roads Design), and BLM Handbook 9113-2 (Roads Inventory and Condition Assessment Guidance and Instructions).



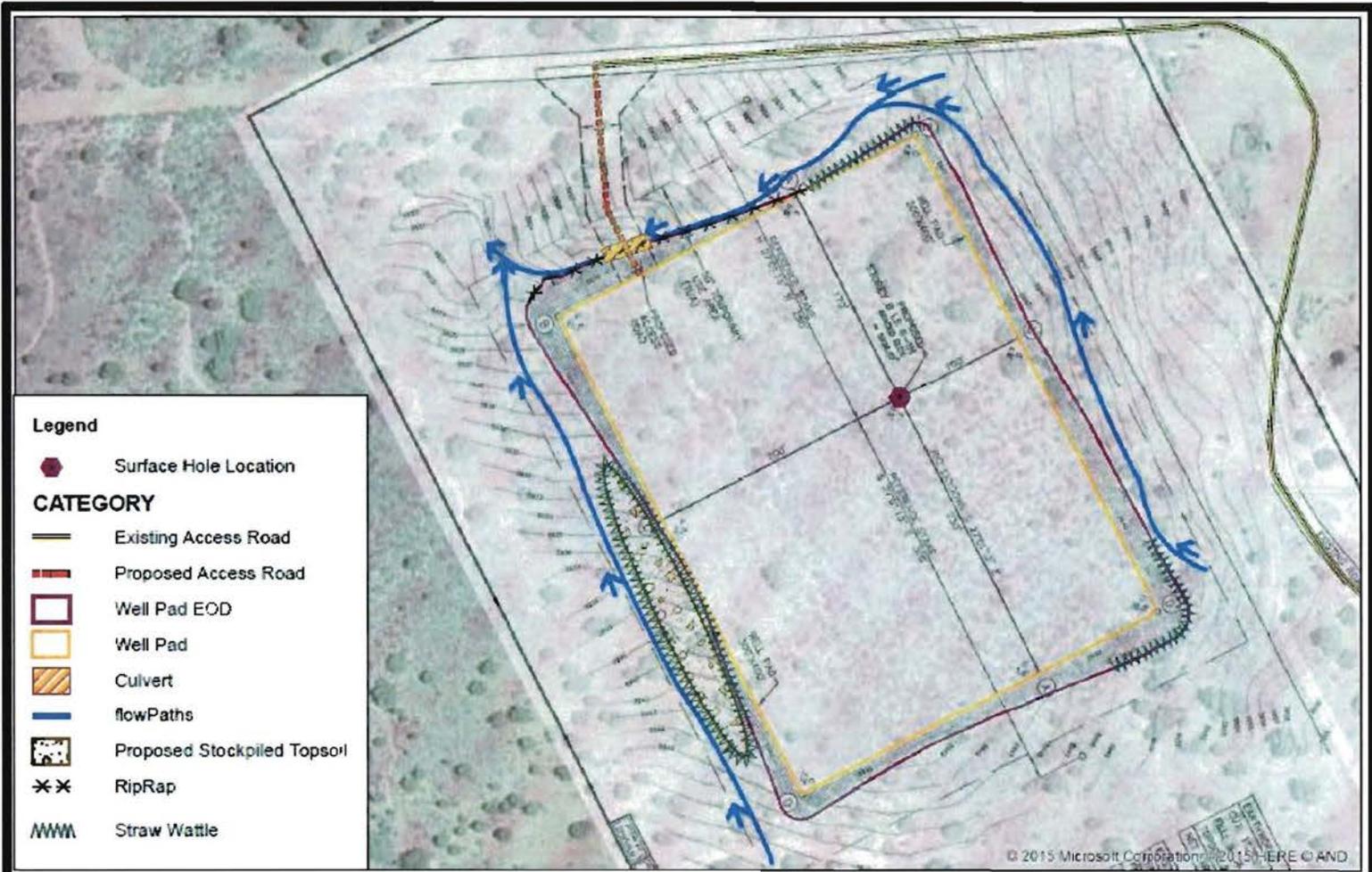
Instructions). Construction will include ditching, draining, crowning and capping, or sloping and dipping the roadbed, as necessary, to provide a well-constructed and safe road.

3. All construction materials for access road improvements will consist of native borrow and subsoil accumulated on site. If additional fill or surfacing material is required, it will be imported from
  - i. Paul and Sons – PV #1 Pit; located approximately 6 miles east of Bloomfield, NM off of Highway 64, or
  - ii. Four Corners Material pit at 1106 Hwy 516, Aztec, NM
  - iii. Crossfire's San Juan Pit located 7 miles east of Bloomfield on US HWY 64

Imported material will be weed-free and authorized. The additional fill will be hauled in by trucks over existing access roads to the area.

4. Construction of the new access road will take approximately 3-4 days.
- b. Well Pad (See Exhibits 4b & 4c)
1. The construction phase of the project will commence upon receipt of the approved APD.
  2. Vegetation removed during construction, including trees that measure less than 3 inches in diameter (at ground level) and slash/brush, will be chipped or mulched and incorporated into the topsoil as additional organic matter. All trees 3 inches in diameter or greater (at ground level) will be cut to ground level and delimbed. Tree trunks (left whole) and cut limbs will be stacked. The subsurface portion of trees (tree stumps) will be hauled to an approved disposal facility.
  3. The upper 6 inches of topsoil (if available) will be stripped following vegetation and site clearing. Topsoil will not be mixed with the underlying subsoil horizons and will be stockpiled within the western temporary use area (TUA) as shown on Exhibit 5. Topsoil shall be separated from subsoil or other excavated material. Topsoil will be tracked and temporarily mulched to minimize off site siltation. Straw wattles will be installed at the base of the topsoil stockpile to reduce stormwater and sediment runoff. Topsoil and sub-surface soils will be replaced in the proper order, prior to final seedbed preparation. Spreading shall not be done when the ground or topsoil is wet or frozen. Vehicle/equipment traffic will not be allowed to cross topsoil stockpiles.
  4. Erosion control and stormwater management design features will be installed as necessary as discussed during the on-site meeting. The operator will utilize straw wattles around stockpiled soils, and at the base of fill slopes as necessary, to prevent sediment from leaving the construction site. Diversion channels will be constructed above the cut slope to divert storm water around the well pad.
  5. The well pad will be leveled to provide space and a level surface for vehicles and equipment. Excavated materials from cuts will be used on fill portions of the well pad to level the pad. The well pad would require a maximum fill of approximately 11.7 feet at the northwest corner, and a cut of 10 feet at the southeast corner. No additional surfacing materials will be required for construction.
  6. Well pad construction will involve preparing a level area for the equipment that will drill and complete the well. The newly constructed well pad will be a 300-foot by 400-foot level well pad area, resulting in approximately 3.22 acres of new surface disturbance. Construction of the well pad would include a 50-foot construction buffer zone around the perimeter of the pad. The total permitted area for the construction of the well pad is 3.62 acres. The final well pad size will be 2.757 acres.
  7. The well pad will be constructed from the earthen materials present on-site. Driving surfaces on the well pad will be capped with a combination of magnesium chloride and gravel for stabilization.





- Legend**
- Surface Hole Location
- CATEGORY**
- Existing Access Road
  - - - Proposed Access Road
  - Well Pad EOD
  - Well Pad
  - ▨ Culvert
  - flowPaths
  - ▨ Proposed Stockpiled Topsoil
  - \* \* RipRap
  - 〰 Straw Wattle



0 50 100  
Feet



**Adkins Consulting Inc.**  
180 East 12th Street  
Durango, CO 81303  
505-793-1140

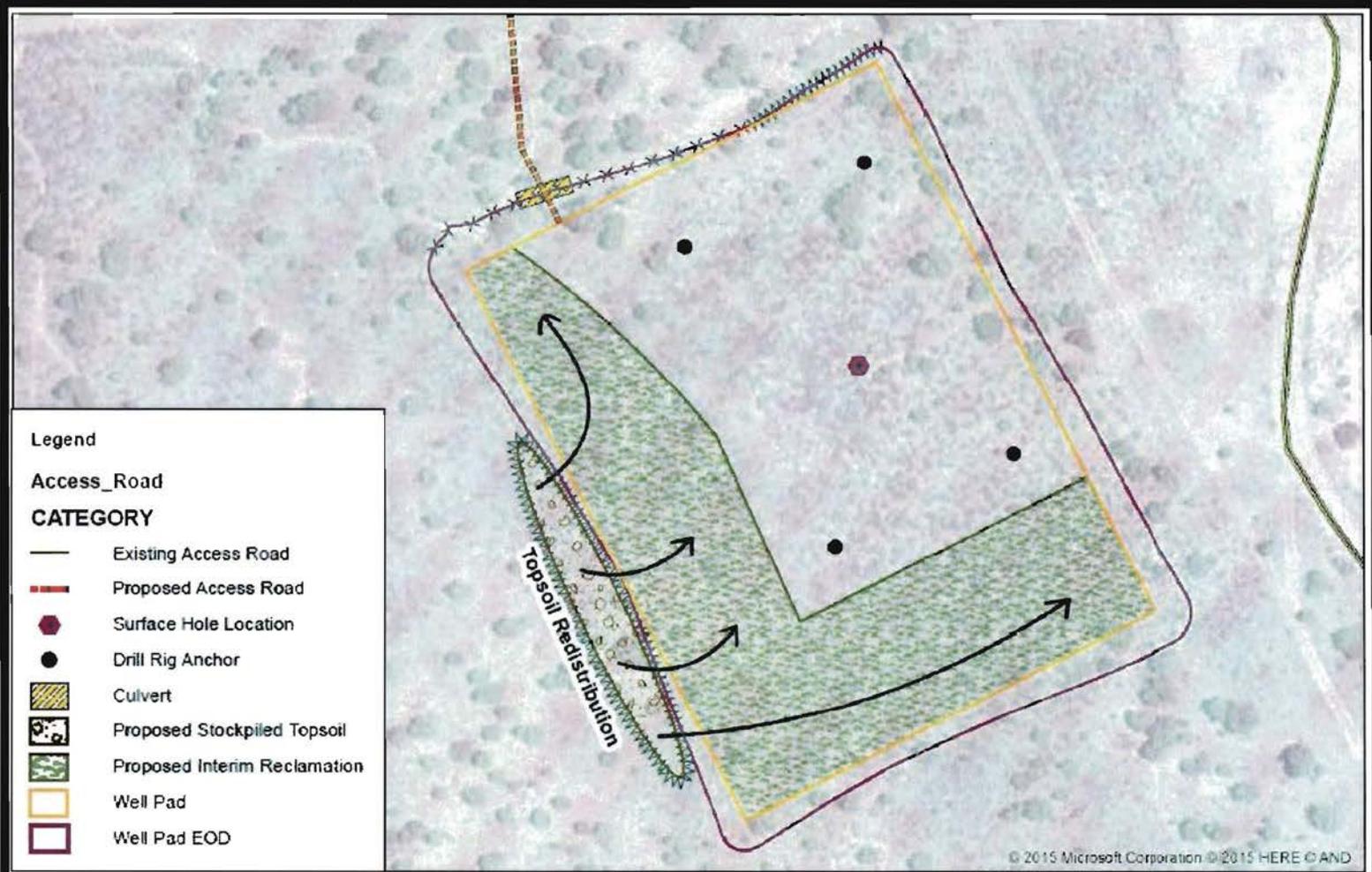
Proposed Topsoil Stockpile and Stormwater BMPs

BP America  
Storey B LS 6 #1

Exhibit 05

August 2015





**Legend**

**Access\_Road**

**CATEGORY**

	Existing Access Road
	Proposed Access Road
	Surface Hole Location
	Drill Rig Anchor
	Culvert
	Proposed Stockpiled Topsoil
	Proposed Interim Reclamation
	Well Pad
	Well Pad EOD




**Adkins Consulting Inc.**  
 180 East 12th Street  
 Durango, CO 81303  
 970-793-1140

**Proposed Interim Reclamation**

**Exhibit 07**

BP America  
 Storey B LS 6 #1

**August 2015**



**United States Department of the Interior  
Bureau of Land Management**

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Surface Reclamation Plan

***BP America Production Company  
Basin Fruitland Coal  
Storey B LS 6 #1H***

---

Prepared for

**BP America Production Company  
200 Energy Ct, Farmington, NM 87401  
(505) 326-0653**

Prepared by

  
**Adkins Consulting, Inc.  
Environmental Permitting Services**

**September 2015**

---

U.S. Department of the Interior  
Bureau of Land Management  
Farmington District  
Farmington Field Office  
6251 N. College Blvd., Ste. A  
Farmington, NM 87402  
Phone: (505) 564-7600  
FAX: (505) 564-7608

BLM





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