

**AMENDED A G E N D A**  
**CITY OF AZTEC**  
**CITY COMMISSION WORKSHOP**  
**October 10, 2017**  
**201 W. Chaco, City Hall**  
**4:45 p.m.**

**4:45-6:00**

Personnel Policy

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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 72 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410.

# City of Aztec Personnel Policy



**DRAFT**

November 2017

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## SECTION 1. INTRODUCTION

### NO CHANGES

#### 1.1 Intent and Purpose

The City of Aztec's Personnel Ordinance establishes the framework for the administration of the City's personnel policies. The Personnel Ordinance was adopted by the Aztec City Commission in its regular meeting of June 25, 2013. The effective date of the Personnel Policy is July 04, 2013.

The purpose of this handbook is to establish basic personnel policies and practices governing relations between the City of Aztec and its employees. This handbook does not constitute an employment contract. This means that employees are free to terminate employment at any time for any reason, and the City of Aztec retains that same right. This handbook may not cover every possible situation, and may be amended by the City Manager, as necessary, with the approval of the City Commission.

The policies and procedures contained herein shall replace and supersede those contained in the August 1, 2012 Personnel Policy.

This handbook of personnel policies should be interpreted as a whole rather than interpreting individual sections or sentences in isolation and out of context. Official interpretation of these policies and procedures shall be made by the City Manager and Personnel Administrator.

Individual department personnel policies, rules, regulations, and procedures may be promulgated with the concurrence of the Personnel Administrator and the approval of the City Manager to ensure that they are not in conflict with the substance of the Personnel Policy.

The City Manager, pursuant to New Mexico Law, has final authority to approve or disapprove personnel actions of all City employees and to act in accord with City Commission policies, consistent with provision of the City Personnel Ordinance.

#### 1.2 Public Employment

Public employees are responsible to the citizens of Aztec. High standards of work ethics and good relations with the public are essential characteristics of public employment. Public employment is the operation of the organization which is geared toward providing service rather than toward making a profit. The objective is to provide services to the public while operating in a business-like manner.

#### 1.3 Line of Authority

The City of Aztec is a political subdivision of the State of New Mexico; and is subject to various rules, regulations and policies as issued by the state government.

The City of Aztec is a Commission-Manager form of government. The governing body in a commission-manager municipality consists of five commissioners, one of whom is selected as mayor by a vote of the majority of commissioners. The Commission is responsible for setting policy for the general operation of the City, approving budgets, and contracts and establishing rules, regulations, ordinances and policies. The Commission appoints a City Manager who is responsible for personnel and the proper and efficient administration of the municipal government.

It is the responsibility of the Personnel Administrator to recruit for the City, and assist the City Manager and Supervisors in the selection and hiring of personnel. The City Manager is responsible for hiring Department Heads (management personnel).

The personnel program consists of an Affirmative Action Policy and all other procedures related to personnel. The personnel program is administered by the Personnel Administrator under the direction of the City Manager. The Personnel Policy rules and procedures shall apply to all employees. The City of Aztec is an Equal Opportunity Employer.

#### **1.4 Amendment of Rules**

Amendments to these personnel rules may be proposed by the City Manager to the City Commission as needed. All amendments shall be adopted by ordinance and shall become effective upon adoption by the City Commission, proper publication as provided by state statutes, and notification of all employees.

#### **1.5 Adoption of Personnel Rules**

Any employee working within a Department which has written Department or Administrative regulations separate from this Personnel Policy shall abide by the more stringent requirement of the two policies.

All employees employed at the time of the adoption of the Personnel Policy Ordinance, and in the positions covered by the Personnel Policy, shall be subject to the provisions of the policy, and all rules and regulations issued pursuant to the policy.

#### **1.6 Administrative Procedures and Regulations**

The City Manager, at any time deemed necessary may amend or rescind written administrative regulations and/or procedures consistent with these rules. Such procedures or regulations shall be effective on the dates specified by the City Manager, and shall be placed on record in the Human Resources Office, together with these policies, to be open to public inspection during normal working hours. The Administrative Regulations and/or procedures shall be distributed to all employees in a timely manner.

#### **1.7 Personnel Administrator**

In the context of the Personnel Policy, Personnel Administrator is used to reference the position responsible for Human Resource Administration. In the absence of a Personnel Administrator, a Designee may be appointed by the City Manager.

#### **1.8 Supervisor**

The use of Supervisor throughout the Personnel Policy is utilized as a reference for Immediate Supervisor and/or Department Head.

## SECTION 2. RECRUITMENT AND SELECTION

### NO CHANGES

#### 2.1 Policy

It is policy for the City of Aztec to recruit and select the most qualified persons for positions established within the city. Recruitment and selection shall be conducted in a manner that will ensure open competition, provide equal employment opportunity, and prohibit discrimination or favoritism because of race, color, religion, sex, national origin, age, disability, sexual orientation and gender identity, ancestry, physical or mental handicap, serious health condition, spousal affiliation, or any other legally protected status. Any discrimination complaint should be filed within 180 days of the alleged discrimination with the Personnel Administrator.

#### 2.2 Personnel

The City Manager employs all persons engaged in the administrative service of the municipality.

#### 2.3 Postings

When a request to fill a vacancy has been reviewed by the Personnel Administrator approved by the City Manager and/or the Finance Director, the vacancy shall be filled as outlined below.

**Note:** *Police personnel shall be responsible for establishing the hiring and testing process for all police officers.*

1. Internal Posting. The vacancy shall be posted internally as an opening for City of Aztec employees for consideration. The opening will be announced through the City's internal e-mail system and will remain open for three (3) days. A copy of the Job Description will be available at City Hall. City Employees will need to complete a City of Aztec Job Application and submit it to the Human Resource Department.  
(AR-2014-40; Incorporated into Personnel Policy 2015)
2. External Posting. Job announcements shall be posted in places available to the general public. External postings shall include pertinent job information, including minimum job qualifications. Postings may include the essential functions, work environment, physical, and cognitive requirements. External postings may be announced through advertisement in newspaper, City web site, e-mail, and other means deemed necessary.
3. Duration. Job announcements shall be posted (internally or externally) for not less than three (3) business days before a position is to be filled. This period of time may be waived by the City Manager or Personnel Administrator for emergency placements or special situations.
4. All advertising shall contain the following statement: *The City of Aztec is an Equal Opportunity, Reasonable Accommodation Employer.*

#### 2.4 Former Employees

1. Former employees who left the city in good standing may be considered for rehire.

2. Former employees who resigned without written notice or who were dismissed for disciplinary reasons may not be considered for rehire.
3. A former employee rehired shall be considered a new employee from the date of hire.

## **2.5 Application Form**

All applications for employment shall be made on forms prescribed by the Personnel Administrator.

## **2.6 Application Submittal**

All applications must meet posted deadlines in order to be accepted. All applications, resumes and other required documentation shall be submitted to the Human Resources Office or City Hall either in person, by mail, e-mail or fax.

## **2.7 Internal Applicants**

All existing employees, including part-time and seasonal employees who meet the minimum job requirements, qualifications, and education, shall be subject to the same tests as external applicants. An applicant's current supervisor may be contacted to verify performance, skills, and attendance. The Department Head may also review the personnel file.

Employees who are on disciplinary probation or suspension shall not be eligible to apply for posted jobs.

## **2.8 Rejection of Application**

An applicant may not be considered for hire for the following reasons:

1. Has deliberately falsified an application or resume. (Current employees who violate this section shall be subject to disciplinary action, up to and including termination).
2. Is unable to perform the essential function of the position, with or without reasonable accommodations.
3. Has failed to pass a pre-employment background check, including driving record check, finger printing, and/or any other State or Federal checks.
4. Applicant with a poor driving record, as determined by the City through MVD driving records and NM Self Insurers Fund, shall be disqualified for employment.
5. The applicant is under the age of 18 and the position requires the applicant to operate a motor vehicle (Age exception: Youth employees hired by the City)
6. Is unable to meet the minimum job qualifications, education, and experience requirements as outlined in the job description.
7. Has submitted an application after an announcement closed, or has submitted an application for an unannounced position.

8. Has submitted an incomplete application, submitted only a resume, or failed to provide copies of documents cited in the job announcement by closing date.
9. Receives a positive test or diluted test result on a pre-employment drug test.
10. The applicant upon notification of a positive test may request a second drug test. A second test shall be allowed only if applicant submits to the pre-employment drug test the day of notification, and the second test is at the applicant's own expense.
11. Those applicants that receive a positive test on a pre-employment drug test (whether one or two tests failed) shall not be eligible to submit another application for employment for a period of six months.

## 2.9 Application Review and Referral

The intent of the application review process is to maximize reliability, objectivity, and validity through a practical and job-related assessment of applicant attributes necessary for successful job performance and career development. This process also provides opportunities at various levels through promotion. Reasonable attempts should be made to fill vacancies from current City employees.

1. Selection Method. The Personnel Administrator, with input from the Supervisor, shall be responsible for determining selection methods to obtain the best qualified candidates for each position.
2. Application Pool. Applications will be considered active for a period of six months. The applicant must contact the Personnel Administrator and request the application be considered for other positions. Upon recommendation by the Supervisor, the Personnel Administrator may contact the next qualified applicant if same position applied for opens within 90 days of receiving the application, eliminating the need to re-advertise.
3. Performance Testing. The Personnel Administrator may require assistance from the Supervisor to develop performance tests. A performance test is conducted to assess skills and qualifications needed to match the position available. Tests may also be given for positions requiring certain physical dexterity, physical fitness, or operation of certain equipment in order to test the applicant's ability to perform within the job description.
4. Security. Every precaution shall be taken by all persons participating in the development and maintenance of testing materials to maintain the highest level of integrity, security, and confidentiality.
5. Nepotism Prohibited. The Personnel Administrator, the Supervisor, the City Manager, or other staff shall identify and resolve any potential conflict that may occur as a result of nepotism ([Refer to Section 10 - Nepotism](#)).
6. Pre-Selection Prohibited. No City employee or elected official shall promise job appointments to any person. All inquiries regarding vacancies should be referred to the Personnel Administrator.

7. Interviews & Testing. The Personnel Administrator shall arrange interviews and testing.
8. Conditional Offer of Employment. An offer of employment shall be made by the Personnel Administrator or the City Manger to the applicant who is determined to be the most qualified for the position available. Those applicants who interviewed but were not offered a conditional job offer, shall be notified by letter.
9. Physicals, Drug Screens/Testing. The City shall require persons selected for employment to successfully pass a physical examination and drug screen, which shall include testing for alcohol and controlled substances as part of the conditional job offer. Law enforcement officers may also be required to successfully complete the psychological and polygraph testing.
10. Reference, Background, Driving, Past Employment Verification. Reference checks, background checks, driving records, verification of past employment, and information provided on the applicants job application or resume shall be verified as part of the conditional job offer. The Personnel Administrator may require additional information as deemed necessary to fulfill Department Policies and position requirements.

#### **2.10 Disqualification from Conditional Offer**

A candidate may be disqualified from consideration for any of the following reasons:

1. Physically unable to perform the duties of the position, and the individual's condition cannot reasonably be accommodated without undue hardship in the workplace;
2. The candidate does not complete a medical examination;
3. If the exam reveals use of alcohol, illegal drugs, and/or controlled substances;
4. Unacceptable driving record, invalid driver's license, or no driver's license when position requires;
5. Unacceptable background check.

#### **2.11 Start Date**

The Personnel Administrator shall inform the successful applicant of a start date for employment.

#### **2.12 Employee Orientation**

The Personnel Administrator shall contact the Supervisor to schedule an employee orientation. The new employee shall be provided the City's Personnel Policy, Administrative Regulations, Safety Policy, and information regarding City benefits, payroll, and other pertinent information.

Each Supervisor shall ensure that the department to which the new employee is assigned makes provisions for specific orientation to the new employee regarding departmental functions, responsibilities, and unique requirements of the department. The new employee should refer questions to Supervisor or Personnel Administrator.

## 2.13 Probationary Period

Probationary Period is the trial period during which a determination is made as to whether or not an employee is suitable for his/her position. The probationary employee is evaluated on the employee's ability, potential, and performance. A probationary employee serves "at will" and can be dismissed with or without cause by the City during probationary period.

An employee is allowed to transfer or be promoted while in their initial probationary period. At a minimum, an accumulative twelve (12) months of probationary period must be served.

1. Newly Hired. The probationary period for all newly hired employees is twelve (12) months. At six (6) months from the date of hiring, the supervisor will conduct an employee evaluation. The evaluation will be used to provide the employee with guidance as to whether the employee is meeting the job expectations or if the employee requires more improvement in order to continue employment.

If the decision is to *extend* probation, (for any time period up to an additional 6-month period) the employee shall be notified verbally. The Supervisor contacts the Personnel Director and a Personnel Action Form is prepared.

If, at any time during the twelve (12) month probationary period, the decision of the Supervisor is to *discontinue* the employee's employment, the City Manager shall be notified verbally by the Supervisor. The Supervisor contacts the Personnel Administrator, and a Personnel Action Form is prepared. The Supervisor shall inform the employee of termination prior to the start of the workday or at the end of the workday.

2. Police Officer. The probationary period for a police officer shall be as follows: placed on a 12-month probationary period at the completion of the basic police academy.
3. Uncertified Officers: Officers who are not certified by a recognized law enforcement academy on their hire date will remain on probation until twelve (12) months AFTER completion of basic law enforcement academy. Anniversary date for purposes of annual performance review will be one (1) year from date of hire.
4. Certified Officers: Officers who have law enforcement certification at the time of hire by the City will be on a twelve (12) month probationary period. Anniversary date for purposes of annual performance review will be one (1) year from date of hire.
5. Promotional Probation. The probationary period for an employee receiving a promotion within a department shall serve a six (6) month probation in their new position. The employee's anniversary date changes with the promotion. If the promoted employee does not satisfactorily complete his/her promotional probation, the Supervisor with approval by the City Manager shall determine on a case-by-case basis if the promoted employee shall be returned to the position previously held if still available. If the prior position or an equivalent position is not available, the employee will be released from employment with the City.
6. Transfers. The probationary period for an employee transferring from one job classification to another job classification within the same pay grade, or from one department to another shall have a twelve (12) month probationary period. The

anniversary date shall change to the date of transfer. This section excludes duty assignments within a department.

If an employee transferring to a new department is earning a higher rate of pay than what is posted for the position, the employee shall retain current rate of pay if recommended by Supervisor and approved by City Manger.

7. Reclassification. A Supervisor must provide written justification to the City Manager for the reclassification of an employee's position. Upon approval by the City Manager, an employee's position may be reclassified. A new job description must be completed and forwarded to the Personnel Administrator.

## 2.14 Responsibility

The Personnel Administrator is responsible for the overall management of the recruitment and selection processes including employment-related agency relationships.

## 2.15 Forms

All forms completed during orientation by the new employee shall become part of the employee's personnel file.

## 2.16 Internship Program

1. Purpose. As part of an outreach and educational program, departments may find themselves in need of developing an internship program. The internship program is to provide a student with practical experience that could assist the student in their academics and pursuit of a career in public service. The student is expected to both learn from and contribute to this employment opportunity.
2. Eligibility. The internship position will be subject to the following eligibility requirements:
  - 1) Student is a continuing high school or college student; and
  - 2) Student must have a 2.5 GPA or higher; and
  - 3) Demonstrate that the work study is applicable to their education (through a letter of recommendation from a dean or teacher which clearly states a beneficial aspect of the work study to the student's curriculum).
  - 4) Wages for interns working a curriculum-related project must be justified by the Department Head, reviewed by the Personnel Director with approval by Finance Director and the City Manager.
  - 5) Interns being paid to work on City-generated projects or activities will be paid according to an approved student wage schedule.
3. Procedures. The internship position will be subject to the following procedure requirements:
  - 1) All internship positions shall be posted to the web site and/or advertised in the local newspaper and/or school system;
  - 2) Applications will be accepted by all candidates that meet the *Eligibility* qualification;
  - 3) The intern shall be treated as a temporary, part-time or full-time employee as specified in Section 3.2.5;
  - 4) Employment is per semester, not to exceed two (2) semesters (budget allowing).  
(AR-2015-43; Incorporated into Personnel Policy 2015)

## SECTION 3. CATEGORIES OF EMPLOYMENT

### CHANGES: 3.2

#### 3.1 Classification System

1. Exempt Employees. Salaried exempt employees are those whose duties, responsibilities, and compensation render them exempt from overtime requirements of the Fair Labor Standards Act (FLSA).  
(AR-2005-18; Incorporated into Personnel Policy 2012)
2. Non-Exempt Employees. Non-exempt employees are those whose duties, responsibilities, and compensation cause them to not be exempt from overtime requirements of the same Act, and are to be compensated at a rate not less than one and one-half (1-½) times an employee's regular rate of pay for work in excess of forty (40) hours worked in an established 7-day period (43 hours for police officers). Overtime shall be paid monetarily.

#### 3.2 Categories

Scheduled work week is defined as Sunday through Saturday.

##### 1. Regular.

- 1) Full-Time. An employee who is scheduled to work forty (40) hours per seven-day period, [forty-three (43) hours per seven-day period for police officers] shall be entitled to all employee benefits subject to terms, conditions and limitations of each benefit program.
- 2) Part-Time. An employee, who is scheduled to work less than forty (40) hours, but twenty (20) hours or more per seven-day period in a regular budgeted position, shall be entitled to all employee benefits subject to terms, conditions, and limitations of each benefit program on a pro-rata basis.
- 3) Part-Time (19/hrs or less). An employee, who is scheduled to work 19 hours or less per seven-day period, shall not be eligible for employee benefits other than those mandated by law.

##### 2. Temporary.

- 1) Full-Time. An employee, who is scheduled to work forty (40) hours per seven-day period. Full-time temporary employees are hired for a period of less than six (6) months, and shall not be eligible for employee benefits **other than those mandated by law**.
- 2) Part-Time. A temporary employee, who is scheduled to work less than forty (40) hours per seven-day period. Part-time temporary employees are hired for a period less than six (6) months, and shall not be eligible for employee benefits other than those mandated by law.

**3. Seasonal.**

A full-time or part-time employee, hired to work during a particular season, whose employment ends with the season, shall not be eligible for employee benefits other than those mandated by law.

**4. Acting Employee.**

An employee assigned to temporarily assume the duties of a vacant position. An employee normally assumes the acting duties in addition to performance of his/her usual duties. However, an employee may be assigned by the City Manager to perform duties in a position not related to his/her regular duties.

**5. Youth Employee.**

A student hired to work temporarily shall not be eligible for employee benefits, other than those mandated by law. **Hours will be restricted based on standards established by FLSA.**

**6. Elected/Appointed Officials.**

Salary and benefits determined by current State law and/or City Code.

**3.3 Exempt Employees**

1. Under **FLSA**, certain employees are exempt from the minimum wage and overtime requirements if they meet the requirements of the "Standard Test." The City Clerk's Office keeps a supply of "Standard Tests" for Executive, Administrative and Learned Professionals.
2. An exempt employee has virtually "no rights at all" under the **FLSA** overtime rules. About all an exempt employee is entitled to under the **FLSA** is to receive the full amount of the base salary in any work period during which he/she performs any work (less any permissible deductions). Nothing in the **FLSA** prohibits an employer from requiring exempt employees to "punch a clock," or work a particular schedule, or "make up" time lost due to absences. Nor does the **FLSA** limit the amount of work time an employer may require or expect from any exempt employee, on any schedule.
3. All exempt employees will record their time either electronically or on a paper time sheet. All time must be reviewed and approved by the Department Head. City Manager or designee approves all time for Department Heads.
4. Employees taking bank time (e.g., sick leave, vacation, personal day, professional leave), are required to submit a Leave Request (hard copy or electronically) which must be reviewed and approved by Department Head. City Manager or designee approves *Leave Requests* for Department Heads.
5. Employees taking a partial day(s) or full day(s) off will not have to deduct hours from their bank time if the time taken off is four (4) hours or less (e.g., sick leave, vacation, personal day, professional leave), when the scheduled eighty (80) hours per pay period of actual time has been worked. The Employee must submit a *Leave Request* so the Supervisor can account for the time off.

6. For partial day(s) or full day(s) off when an employee works less than scheduled hours in a pay period, time shall be deducted from bank time to bring total hours to scheduled hours on Employee's time sheet (e.g., sick leave, vacation, personal day, professional leave) and employee shall submit a *Leave Request*.  
(AR-2004-07; Incorporated into Personnel Policy 2012)

## SECTION 4. COMPENSATION AND BENEFITS

**CHANGES: 4.10, 4.15, 4.20**

### 4.1 Compensation Plan

It is in the best interest of the City to fairly compensate employees for the value of the work provided. Total compensation represents the largest ongoing expense to the City; therefore, in as much as budget allows and with Commission approval, the City Manager and the Finance Director shall strive for a fair compensation package that attracts and retains qualified and experienced employees. Ongoing reviews of the compensation package shall occur.

### 4.2 City Salary Schedules Defined

There are two general categories for City employees: exempt and non-exempt ([Section 3.1 Classification System](#)).

### 4.3 Standards for Development of the Pay Plan

Pay plan may be developed or updated on the basis of:

1. Responsibility, (i.e. accountability, accuracy, and controls over work);
2. Knowledge, (i.e. formal education, knowledge, skills, and abilities);
3. Difficulty of work, (i.e. judgment and decisions required, complexity and variety of work);
4. Work environment, (i.e. physical effort and working conditions);
5. Prevailing wages of other public entities;
6. Cost of living index;
7. Other economic/job factor/market considerations.

### 4.4 Administration and Amendments of the Pay Plan

The Finance Department and City Clerk's Office personnel shall administer the pay plan. The Finance Director may recommend amendments to the City Manager. If approved by the City Manager, amendments shall be recommended to the City Commission for budgeting.

### 4.5 Entry Level Pay Rates

The entry-level rate is the minimum rate in the pay grade for the position. The Department Head, subject to approval by the City Manager and the Finance Director (for budgetary purposes), may recommend a candidate above the entry-level rate if:

1. The applicant has prior experience.
2. The applicant has exceptional qualifications.
3. The applicant has qualifications which are unique or critical to the position.

4. The applicant is a former employee who left in good standing with the city.

#### 4.6 Compensation Factors

There is no requirement that all individuals assigned to the same classification or grade receive the same pay. Factors such as employment longevity, certifications, promotion, reallocation, merit increases, and other reasons permitted by personnel rules may cause different pay. These individual pay differences do not violate the equal pay for equal work requirement.

#### 4.7 Pay Rate Adjustments

1. Transfers (Reassignment). When an employee is transferred (*reassigned*) from one position to another within the same classification (*pay grade*); the employee may continue to receive the same base rate (*rate of pay the employee is currently earning*). When reassignment includes greater responsibility a higher base rate may be recommended by the Supervisor, reviewed by the Personnel Director and the Finance Director with final approval by the City Manager. This section excludes duty assignments within a department.
2. Promotion. The assignment of an employee from one classification to another classification with greater responsibility. A base rate shall be recommended by the Supervisor, reviewed by the Personnel Director and the Finance Director with final approval by the City Manager on a case-by-case basis.
3. Demotion. The assignment of an employee from one classification or grade to another classification or grade with a lower base rate and less responsibility. A lesser rate of pay shall be recommended by the Supervisor, reviewed by the Personnel Director with final approval by the City Manager on a case-by-case basis. An employee shall be entitled to a predetermination hearing as defined in [Section 6](#).
4. Full Reinstatement. When reinstated from layoff for lack of work or from suspension from duty (with or without pay), the employee may be restored to the same classification or grade the employee had at the time of the employment action.
5. Reinstatement to a Lower Grade. If reinstated to a lower classification or grade, for whatever reason, a lower base rate may be recommended by the Supervisor, with final approval by the City Manager.

#### 4.8 Personnel Action Form

All personnel actions require a Personnel Action Form to be generated by the Personnel Director. The form is circulated to obtain signatures.

#### 4.9 Reporting of Time

Accurately and truthfully recording work time is the responsibility of every employee. Altering, falsifying, or tampering with time sheets is prohibited, and may result in disciplinary action up to and including termination. It is the employee's responsibility to enter time and sign time sheet to certify the accuracy of all time recorded.

#### 4.10 Eligibility for Overtime Pay

FLSA non-exempt employees shall become eligible to be compensated monetarily at one and one-half (1½) times for all actual hours worked in excess of forty (40) hours during a regularly

scheduled seven-day work week (43 hours per 7-day period for police officers). Listed are examples of when an employee shall be compensated for overtime and when an employee shall not be compensated:

1. Occasional periods when no work is performed due to vacation leave or sick leave, the leave shall not be calculated as time worked during that pay period.
2. Those employees who work less than forty (40) hours per week shall be compensated at straight time.
3. Overtime pay for FLSA exempt employees is not required for those employees who work more than forty (40) hours per 7-day period.
4. Employees called for an emergency or during a holiday week shall be compensated for all hours physically worked at straight time up to forty (40) hours within a forty (40) hour pay week and one and one-half (1-½) times monetarily for additional hours worked greater than forty (40) hours in a pay week.
5. Non-exempt employees required to work a recognized holiday shall be paid ~~double~~ straight time.
6. Police Officers working shift schedules shall be given additional vacation time as outlined in the Administrative regulation.
7. Part-time seasonal and temporary personnel working less than forty (40) hours per week shall receive straight time unless hours worked in a 7-day period exceed forty (40) hours; then they shall be compensated at one and one-half (1½ ) times for actual hours worked.

#### **4.11 Overtime Authorization and Recordkeeping**

Supervisors shall approve overtime and must maintain accurate records on non-exempt employees who work overtime and the reasons for the overtime. The City Manager may request any overtime to be worked to receive prior approval. Any adjustments made in overtime records shall be accompanied by a written explanation of why the adjustments were made.

#### **4.12 Compensated Volunteers**

Policy. Employees are encouraged to volunteer their time for community services. In most instances, the time volunteered occurs outside an employee's normal work schedule and is for duties substantially different from the employee's normal work duties/responsibilities. This time is not compensable. However, there are a few exceptions as noted in 1-3 below.

Scheduling. Occasionally, volunteer duties may conflict with normal scheduled work hours. The employee is responsible for advising his/her Supervisor of his/her volunteer duties. The Supervisor has the option to allow or disallow an employee to volunteer during normal work hours, based on the needs of the department.

1. The City operates a Volunteer Fire Department. Employees are encouraged to join this organization (Section 4.22). The volunteers are paid an allowance based on each call in which they participate, and number of years of service with the organization. Allowance subject to withholding as identified by law.

2. The Community Center is rented by groups for a variety of functions. It may be necessary for security to be provided depending on the event, and/or the subsequent cleaning of the center following the completion of the event. Parties renting the center complete a contract in which it is agreed what they will pay for the required security and cleaning. The fees are collected in advance of the services being provided. Both Police Officers and City Building Maintenance Personnel are asked if any are willing to work during their off duty time. Those agreeing to work must understand their compensation is based on the contract with the party renting the facility, and not the City. This compensation is included with the employee's regular paycheck. However, the hours are not included when calculating overtime compensation for on duty hours.
3. Businesses and organizations may also contract with the Police Department for a variety of police related services. Again, willing Police Officers may work during their off duty time to provide these services. The contract, and not the City, specifies the amount of compensation, which must be communicated to the volunteer prior to services being provided. The compensation for these volunteer services is then included in the employee's regular paycheck, but the hours are not included when calculating overtime compensation for on duty hours.

#### **4.13 On-Call, Emergency/Standby and Show Up Policy & Definitions**

1. Policy. Non-exempt employees who are required to be on-call or on standby and who make their time outside regularly scheduled hours available for City service shall be compensated as provided by FLSA.
2. Definitions.

##### On-Call Employee

An individual who is required to be available to respond to calls and emergencies, but who, on their time off from work is free to use the time as he or she pleases, is considered an on-call employee. These employees are required to carry a pager and/or cell phone and respond to calls for service. These employees are not entitled to additional wages or an overtime premium by virtue of being on call, waiting to be paged or called to work. When an on-call employee is called into service, that employee's time on the job shall be compensated as provided in FLSA. These employees will be compensated for a minimum of one hour of time for every call out, beginning from the time they leave their residences until their service is complete. Time shall be compensated at one and one-half times (1 ½) for actual hours worked in excess of forty (40) hours for regular employees, or 43 hours for police officers.

##### Emergency/Standby Employee

An individual required to standby his/her post ready for duty and whose time is controlled by the Supervisor is considered an employee on standby. Employees on standby are not able to use this time for their own purposes and move about freely. Such periods of time are usually short periods and those occurrences are not predictable. This time is compensated one and one-half times (1 ½) for actual hours worked or required to standby in excess of forty (40) hours in a workweek for a regular employee and 43 hours for police officers. (Emergency/Standby Employee is used during disasters and not for normal routine on-call.)

### Show-Up Pay

Sometimes referred to as Call-Out pay. This payment is awarded to designated non-exempt employees who report to work when called out from off-duty status, but time spent is less than one hour. These employees will be compensated for a minimum of one hour of time beginning from the time they leave their residences until they are released from duty and return home. Time will be calculated at one and one-half time (1 ½) if hours worked in a workweek are greater than forty (40) hours for a regular employee, or 43 hours for police officers.

#### **4.14 Holiday Pay Procedure**

The following days are recognized by the City on the calendar date that it occurs:

- New Years Day (January 1)
  - Easter Sunday
  - Memorial Day (Last Monday of May)
  - Independence Day (July 4<sup>th</sup>)
  - Labor Day (First Monday in September)
  - Thanksgiving (Last Thursday of November)
  - Christmas (December 25)
1. City offices will be closed on these recognized days and employees will use available accrued leave for that day.
  2. Employees without available leave will not be compensated for those days and will record the day as Leave Without Pay.
  3. Employees required to work those days will be paid straight time.
  4. If an employee is using vacation for a designated holiday and is called in to work, the compensation is the full number of vacation hours for the recognized holiday plus the hours worked.

#### **4.15 Pay Plan Increases**

The annual budget approved and adopted by the City Commission may include merit increases and/or incentives or **cost of living adjustment** as presented by the City Manager and the Finance Director.

#### **4.16 Longevity Pay**

The annual budget approved and adopted by the City Commission may include longevity pay as presented by the City Manager and the Finance Director.

#### **4.17 Workers' Compensation**

All City employees are covered under the provisions of the New Mexico Workers' Compensation Act.

1. Report of Injury. Regardless of the nature or severity of the injury, the City requires that all injuries sustained on the job must be reported to the employee's immediate

supervisor. Once the employee has notified his supervisor the Employee will report the injury to the Safety Coordinator or Personnel Administrator and to complete the appropriate forms (see Safety Policy for forms). The forms are then submitted to the Self Insurer's Fund by the Personnel Administrator.

2. Injuries Requiring Medical Attention. If a serious injury occurs that requires emergency medical attention, call 911 immediately. The supervisor should notify the Safety Coordinator or Personnel Administrator regarding the injury as soon as possible. Documentation should be completed and turned into the City Clerk's Office within 48 hours of the injury (First Report of Injury, Accident Investigation Form and HIPPA Approval Form). A copy of any documentation received from the medical provider should be forwarded to the City Clerk's Office.

If an injury occurs which requires medical attention but is not an emergency the employee may contact the Safety Coordinator or City Clerk office for assistance in setting an appointment with the City's Medical Provider. Within 48 hours of the injury the employee and Safety Coordinator or Personnel Administrator shall complete the appropriate forms. A copy of any documentation received from the medical provider should be forwarded to the City Clerk's Office.

3. Injuries Requiring No Medical Attention. If an injury occurs which does not require medical care the Safety Coordinator or Personnel Administrator will complete a Notice of Accident (1/2 sheet) and an Accident Investigation form within 48 hours of the injury (see Safety Policy for forms).
4. Recording of Time. Detailed information regarding proper coding of time sheets is available from the City Payroll Clerk.
5. Workers Compensation Payment. If an injury/illness requires the employee to be off work longer than seven days, worker's compensation payments will begin. Worker's Compensation pays two-thirds (2/3) of the normal salary. The employee has the choice of supplementing the remaining third (1/3) with any leave that they have accumulated.

If an employee chooses to supplement their Worker's Compensation pay with their leave, the employee shall instruct the Self Insurer's office to send their pay to the City.

If there is a duplicate payment to the employee then all funds received as a duplicate payment from Worker's Compensation will be reimbursed to the City. Specific information regarding workers compensation payments and supplementing of payments with accrued leave is available from the Human Resources office.

6. Miscellaneous Information.
  - 1) A variety of booklets from the Division of Worker's Compensation are available in the City Clerk's Office.
  - 2) An employee is welcome to contact the Self Insurer's office at any time regarding their claim.

- 3) The City will enforce all safety rules and employees who violate them will be disciplined up to and possibly including termination. Willful violation of safety standards may also result in a reduction of Worker's Compensation benefits.
- 4) The City Clerk's Office will forward a copy of the Accident Investigation Report to the employee's immediate supervisor.

(AR-2010-26; Incorporated into Personnel Policy 2012)

#### **4.18 Cell Phone Compensation**

1. The City will pay a cell phone allowance to employees required by their department heads to carry a cell phone. Cell phone allowances shall be established within an Administrative Regulation.
2. The monthly allowance will be added to the employee's salary with appropriate tax deducted. To qualify for an allowance, a current monthly bill, including the cell phone number of the employee, billing period, evidence of data package, and plan costs, must be submitted to the Finance Department prior to implementation of allowance. The Department Head must provide written approval to the Finance Department for the employee cell phone allowance.
3. The monthly allowance will be included on the employee's paycheck for the first pay period ending in the month (pay period ending date will vary month to month, anywhere from the 1st to the 14th).
4. Each employee is responsible for their personal cell phones; the city will not advise on choice of carriers, type of contracts or phones and will not manage an employee's cell phone account. Cell phone service costs exceeding any allowance provided by the City are the employee's responsibility.
5. Department Heads are responsible for ensuring that departmental employees receiving a cell phone allowance have functioning service at any time.
6. Employees receiving a cell phone allowance are required to advise their department head immediately if there is an interruption in service, discontinuation of service, or changes in service, An employee's failure to maintain cell phone service as required by the Department may result in disciplinary action.
7. Any changes in employee cell phone service (carrier, phone number, costs, etc.) must be provided to Finance Department within 30 days of change. Finance Department must be notified immediately upon cancellation or suspension of employee's cell phone service. Failure to provide necessary information to Finance Department may result in suspension of cell phone allowance and potential repayment of prior period allowances.
8. On call cell phones utilized must be checked in and out with the Department Head. The on call employee must also log all calls with date, time, business or personal. This log is to be submitted to the Finance Department the first day of each month. Physical damage and/or malfunctioning on call cell phones must be reported to the Department

Head immediately. Failure to advise and/or damage resulting from employee negligence may result in disciplinary action.

9. It is the responsibility of each employee to be aware of local laws regulating the use of cell phones while driving. The City strongly recommends phones not be used in congested areas; wait until you can safely pull off the road or in a less congested area before using your phone.

(AR-2011-28; Incorporated into Personnel Policy 2012; AR-2015-43; Incorporated into Personnel Policy 2015)

#### **4.19 Professional Organization Membership Compensation**

Memberships in any club organized for business, pleasure, recreation or other social purpose represent taxable, reportable income. Dues and membership fees for employees in some professional organizations are paid by the City of Aztec. Taxability of these payments is based on whether membership is required for completion of the employee's duties and/or advances the business interest of the City. To qualify as non-taxable, there must be a logical connection between membership in the organization and the employee's job.

(AR-2003-02; Incorporated into Personnel Policy 2012)

#### **4.20 Uniform Compensation**

1. All field employees are required to wear a uniform provided that the department has adequate funding available in their fiscal year budget. Uniforms will be provided for each field employee, department head, supervisor, and/or employees that perform field work or are exposed to the elements. **Maximum limits to uniform compensations are established through an Administrative Regulation.**
2. Uniforms issued to an employee shall become the responsibility of that employee for cleaning and maintenance. Loss or destruction of uniforms or equipment that is not a result of employee negligence may be replaced by the Department. Negligence or carelessness could result in disciplinary action and/or replacement through an employee paycheck.
3. With the exception of PPE, personal items purchased by the city for the employee and public officials are taxable benefits.
4. **If an employee voluntarily terminates position or is terminated by personal actions within 3 months of date of hire they will reimburse costs associated with uniforms. If the employee does not return items within 24 hours from termination, the cost of the items will be taken out of their final pay check.**

#### **4.21 Jury Duty Compensation**

1. City employees who are required to serve in San Juan County as a juror will record their time served as regular time on their time sheets.
2. Any compensation received by the employee from the local courts will be the employee's property. There is no reporting requirement to the City.
3. Employees are required to advise their immediate supervisor of potential dates as soon as possible.

4. Jury duty served outside of San Juan County will be evaluated as each situation presents itself. Items of consideration will be where the jury is to be convened, length of service, potential compensation, etc. Individuals involved in the evaluation include the employee, immediate supervisor or Department Head, Personnel Director (or designee) and City Manager. The final decision will be made by the City Manager.

#### **4.22 Volunteer Fire Department Service and Compensation**

The City of Aztec operates a Volunteer Fire Department and employees are encouraged to join.

Volunteers are paid an allowance based on each call in which they participate and number of years of service with the organization. This policy is set by the Fire Department and details about the organization may be obtained from the Fire Chief.

Any employee may serve with the Aztec Volunteer Fire Department with the approval of the Department Head. Occasionally, volunteer duties may conflict with normal scheduled work hours. The Department Head has the option to allow or disallow an employee to volunteer during normal work hours based on the needs of the department.

The employee will be allowed ten (10) paid hours per pay period for fire calls during normal working hours. Time will be paid by the department they are assigned to. Any time over this amount will be at the employee's expense and charged to comp time or vacation time.

The employee will not be paid by both their City Department and Fire Department for the same time. The employee should use discretion on types of calls and may be required to leave only on a second call basis. The employee will be required to notify their department head or supervisor with the time they are leaving their job to answer a fire call and upon returning. A copy of the Fire Department log will be presented to the Department Head at the end of each pay period to verify hours away from the employees normal work schedule. If time is not recorded, the employee could be subject to the [Leave Policy](#).

(AR-2005-12; Incorporated into Personnel Policy 2012)

## SECTION 5. LEAVE AND HOLIDAYS

**CHANGES: 5.6, 5.7, 5.8, 5.9, 5.15, 5.16, 5.23, 5.24, 5.26**

### 5.1 Leave Definitions

Leave is an employee benefit made available by the City of Aztec for eligible employees. Leave generally falls in two categories:

1. Leave With Pay. Absence from duty with pay.
2. Leave Without Pay. Absence from duty without pay.

### 5.2 Administrative Leave

An employee may be placed on Administrative Leave pending the outcome of any investigation, with or without pay, on the recommendation of the Supervisor and approval of the City Manager. Paid leave is approved at the discretion of the City Manager.

When there is reason to believe or suspect that the safety or welfare of a City department, its facilities, its property or the safety or welfare of the department's employees or the public may be endangered or an investigation may be impaired, an employee whose conduct is being investigated may be placed on Administrative Leave.

Administrative Leave under this section shall not constitute discipline. During this period, the employee shall not attend his/her regular work site or any other City facilities, except as designated in the notice of administrative leave. The employee shall remain available during normal work hours to meet with the Supervisor or City Manager as requested.

### 5.3 Professional Leave

Exempt employees shall be permitted a maximum of sixty (60) hours of paid Professional Leave per calendar year (pro-rated according to hire date) and cannot be accumulated into the following year. City Manager shall approve Department Heads request for Professional Leave. All other exempt personnel must get approval for Professional Leave from their Supervisors. Professional Leave allows the employee to be away from work without losing any work-related benefits.

1. If Commission meeting attendance is not met within a calendar year, the exempt employee shall lose their professional leave for the following year.
2. If Commission meeting attendance is met within a calendar year, the exempt employee shall receive their professional leave for the following year.
3. When an employee terminates for any reason, the employee shall be paid for any unused Professional Leave.

### 5.4 Annual (Vacation) Leave

Annual Leave (also referred to as vacation) may be taken from time to time, depending on unused accrual and approval by immediate Supervisor. Individual must be employed in a regular, budgeted full-time or part-time position. Annual leave for part-time regular positions shall be calculated on a pro-rata basis.

All full-time or part-time (20+ hours) regular employees shall be eligible for annual leave after six (6) months of employment in the benefit position. Use of the leave can occur after this time.

Request for annual leave prior to six (6) months of employment shall require approval by Supervisor, and shall be recorded as leave without pay.

All employees are encouraged to schedule vacations with his/her Supervisor as early in the year as possible.

**Calculation of Annual Leave**

If the employee’s regularly scheduled pay period is eighty (80) hours, he/she will accumulate the maximum amounts (see table below).

Total Years of Service	Bi-Weekly Rate Percentage	Hour Accruals Per Pay Period	Maximum Hours Accrued Per Year
0 through 4 inclusive	3.8464%	3.08 hours	80 hours
5 through 14 inclusive	5.7693%	4.62 hours	120 hours
15 or more	7.6928%	6.15 hours	160 hours

If the employee’s regularly scheduled pay period is less than 80 hours, but 20 hours or more, the employee can calculate his/her annual leave accumulation in the following manner:

Regular Scheduled Hours: 60 hours per pay period  
 Bi-weekly Rate: 3.8464% (from table above)

**Example:**  
 $60 \text{ hours} \times .038464 = 2.31 \text{ hours per pay period}$   
 $2.31 \text{ hours} \times 26 \text{ pay periods per year} = 60 \text{ hours vacation annually}$

**5.5 Annual (Vacation) Leave Maximum Accrual Allowance**

No more than 360 hours of Annual Leave shall be accumulated for any city employee, with the exception of certified police officers, who may be allowed to accumulate 440 hours.

When an employee terminates for any reason, the employee shall be paid for all accrued annual leave only if employee has completed his/her initial six (6) month probationary period.

**5.6 Annual (Vacation) Leave Payout**

The purpose of vacation payout is to reduce the long term liability to the City and taxpayers associated with employee accrued leaves. It is the policy of the City to recognize employee service through the availability of vacation based on years of continuous employment to regular employees who are eligible for city benefits (as defined in City of Aztec Personnel Policy, [Section 3.2 Categories of Employment](#)). Vacation payout is available to all regular employees under the following provisions:

Vacation payout is subject to budgetary constraints ~~as determined by the City Manager and Finance Director~~ and may not be funded on an annual basis.

Employees who have a minimum of one hundred (100) hours vacation available ~~as of October 15th of the current year~~, may at their option, sell back vacation hours to the City as follows:

Vacations Hours Available	Vacation Hours Buy Out
100 hours	10 hours
150 hours	20 hours
200 hours	30 hours
250 hours	forty (40) hours

The Finance Department will advise employees, via city email, of the opportunity for vacation payout. The employee must provide written notification of intent to sell vacation hours ~~must be provided~~ to the Finance Department ~~by the date identified in the email notice. between the dates of October 25th and November 10th~~. If insufficient vacation hours are available to the employee at the time of payout, the hours requested for payout may be reduced or eliminated. The employee ~~needs to should~~ consider future vacation ~~hour requirements plans~~ prior to a vacation payout request to avoid insufficient time available for a planned vacation ~~or city holiday~~. Vacation payout will be processed ~~on the pay date identified in the email notification by the Finance Department with the pay date immediately preceding Thanksgiving (fourth Thursday in November)~~ and is subject to deductions required by law.

(AR-2012-33; Incorporated into Personnel Policy 2012)

**5.7 Personal Day**

One regularly scheduled day ~~with pay~~ is provided as an additional benefit. A request for the personal day must be approved in advance. The personal day shall not carry over to the next calendar year.

All ~~full-time and part-time~~ regular employees shall be eligible for the personal day immediately upon employment ~~and are limited to only one (1) personal day per year~~. When an employee terminates for any reason, the employee shall be paid for the accrued personal day.

**Note:**  
 If an employee is laid off or terminated and then rehired within the same calendar year, they are not eligible for another personal day for that calendar year.

**5.8 Leave of Absence and Leave Without Pay (LWOP)**

~~Leave without pay shall be used only when all other appropriate leave has been exhausted.~~ Upon written request by the employee and approval by both the ~~Supervisor~~ Department Head and the City Manager a period of leave may be granted without pay to any regular employee for a period of time not to exceed six (6) months. The City of Aztec shall not contribute to or maintain insurance, PERA, or any other retirement or benefit program for the employee while an employee is on leave of absence.

**The following in Blue was moved from original 5.19 section which was Leave Without Pay (additional changes in RED):**

This classification, hereinafter referred to as Leave Without Pay (LWOP), may be awarded voluntarily or involuntarily for a variety of reasons.

1. Involuntary LWOP - Employees are usually assigned to this status for disciplinary reasons as a result of employee misconduct. In those cases LWOP status assumes the form of suspension from duty without pay for a specific period of time. In every case involuntary LWOP status is initiated by the ~~Supervisor~~ **Department Head** and approved by the City Manager.
2. Voluntary LWOP - LWOP may be approved only when all other leave has been exhausted. This type of leave may be requested by employees for a variety of reasons not covered under the Family and Medical Leave Act. **Approval of LWOP is by Department Head for up to one (1) regular work week. LWOP greater than one (1) regular work week requires approval from the City Manger is discretionary on a case-by-case basis.** Each request shall be considered in terms of work load, staffing levels, business necessity, availability of personnel, timeliness, and other job-related factors.
3. Reinstatement from Involuntary LWOP Status - Reinstatement will be made only if a vacant position exists for which the employee who was on LWOP, qualifies. The City Manager shall make the final determination concerning reinstatement based on suitability, budgetary constraints, staffing levels, and other related factors.
4. Continuation of Certain Benefits during LWOP Status - The following shall apply when an employee is on LWOP for one full pay period or longer. The Supervisor is charged with the responsibility of making sure that employees receive information on what happens to their benefits during that period. The employee may continue as a member of the Employee Health Care Plan in accordance with the provisions of the applicable insurance contract by paying both his/her share and the City's share. If the LWOP status is due to medical disability, as defined by the Family Medical Leave, the employee may continue to be covered under the City's group insurance by paying his/her portion of the benefit. All other contributions such as accrual of Sick and Annual Leave, contributions to PERA and all other kinds of paid leave are forfeited during the period of LWOP.

## **5.9 Sick Leave**

1. Sick Leave is an employee benefit provided by the City, which provides time off from regular duty, with pay, when an employee is unable to work due to illness, injury, or for a qualifying event as defined by the Family Medical Leave Act (FMLA and Section 5.18).
2. Sick Leave shall accrue at ninety-six (96) hours per year for regular full-time employees.
3. Employees regularly scheduled for less than eighty (80) hours but more than forty (40) hours per pay period shall accrue sick leave at the rate of 4.6155% of regularly scheduled hours per pay period.

4. Abuse of Sick Leave may result in disciplinary action up to and including termination. Sick Leave abuse is defined as charging Sick Leave for work absences when not sick, except for an FMLA qualifying event. Any of the following conditions may indicate a need to review sick leave use:
- 1) Patterns of Use:
    - After pay day;
    - Using the same day of the week repeatedly;
    - The day before or after recognized holidays;
    - The day before or after annual leave; or
    - The day before or after weekends.
  - 2) When a review of the Personnel Leave Register reveals that Sick Leave is being used at the same rate that it is being accrued.
  - 3) The Supervisor may require an employee to provide verification from a physician that an absence was caused by a medical situation anytime there is reasonable suspicion that Sick Leave is being abused.
  - 4) In the absence of approved family/medical leave, any employee wishing to take sick leave must notify his/her Supervisor of the illness prior to the time he/she is expected to report to work. Notification is to be made by telephone, text message, or other electronic device. The Supervisor may, at the time of the illness or upon the employee's return to work, require a doctor's statement confirming the medical necessity for the employee's absence. The Supervisor may also require a doctor's statement allowing the employee to return to work.
  - 5) Whenever an employee has been absent from duty because of an injury/illness for three (3) or more consecutive days, the employee is required to have certification by a physician. **Failure to provide certification by a doctor for absence may result in leave without pay and/or disciplinary action.**
  - 6) When employee's supervisor becomes aware of a potential FMLA event the Supervisor shall notify the Personnel Administrator to initiate the FMLA procedure.
  - 7) In extenuating circumstance, an employee may use his/her accrued sick leave to care for members of his/her family inside or outside the hospital, and/or during surgery when recommended by the Supervisor and approved by City Manager (See Section 10 Definitions. *Family*). ~~Family members are defined as follows: spouse, son, daughter, mother, father, brother, sister, grandparent, grandchild, step-parent, step-child, step-sibling, foster/adoptive child, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law, or domestic partner.~~  
(AR-2015-44; Incorporated into Personnel Policy 2015)

**Note:** Notification from another employee or relative is not acceptable, except in an emergency situation.

### 5.10 Sick Leave Maximum Accumulation Allowance

No more than 1,040 hours of Sick Leave shall be accumulated for any City employee.

### 5.11 Sick Leave Payout

Employees who have accumulated Sick Leave in excess of 480 hours, as of April 30<sup>th</sup> of the current year (no exceptions) may at their option sell back hours to the City with the following provision:

1. Written notification of intent to sell Sick Leave must be given to the Finance Department between the dates May 1 through May 15. Payout shall be processed with the first pay date in June. Maximum Sick Leave that may be sold back to the City in any given calendar year shall be forty (40) hours.
2. Due to budgetary constraints the selling of Sick Leave can cease at any time as deemed necessary by the City Manager and the Finance Director.

### 5.12 Sick Leave Payout – Retiring Employees

Employees with fifteen or more years of service, who separate or retire while on the active payroll, shall be paid for unused Sick Leave to a limit of 347 hours (1,040 divided by 3) or at a ratio of 3:1.

**Example:** Employee retires in October with 760 hours of accumulated sick leave. In May of the same year (calendar) the employee sold back to the city 80 hours of sick leave. The employee shall be paid for 173 hours. (760 divided by 3 minus 80 hours = 173.)

### 5.13 Sick Leave Bank

1. The City has established a Sick Leave Bank to provide an employee additional paid sick leave when an employee is unable to work due to illness, injury, or for a qualifying event as defined by the Family Medical Leave Act ([FMLA](#) and [Section 5.18](#)). See [Section 10 Definitions. Family. Family members are defined as follows: spouse, son, daughter, mother, father, brother, sister, grandparent, grandchild, step-parent, step-child, step-sibling, foster/adoptive child, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law, or domestic partner.](#)
2. Employees who wish to join the Sick Leave Bank will contribute vacation at an amount equal to one-fifth of their regular weekly scheduled hours. When the Bank has been depleted to \$15,000, members will again contribute their annual amount (in January) until the bank has accumulated \$20,000.
3. The Finance Department will deduct the employee's vacation time and convert all hours to dollars based on the contributor's hourly rate and then reconvert all dollars back into hours based on the user's hourly rate. An employee can review their leave status to determine when hours were deducted from vacation through their timesheets.
4. An employee has the opportunity to join the Sick Leave Bank at any time. Employees who wish to join the Sick Leave Bank may do so by signing a participation form in the

City Clerk's Office. Employees become eligible to request Sick Leave Bank time six (6) months from the time they sign the participation form. Each employee must sign accepting or rejecting membership in the Sick Leave Bank. Withdrawing from membership will not entitle the employee to previously donated days.

5. The City Clerk's Office shall forward all requests to the Administrative Review Committee for review. This Committee will be comprised of the Personnel Administrator, Finance Director and a Department Head not in a supervisory position over the employee. The Administrative Review Committee will submit a recommendation to the City Manager. The City Manager will make the final decision and the Personnel Administrator will contact employee.
6. Provisions for requesting funds:
  - 1) An employee must be a member of the Sick Leave bank for a minimum of six months before they are eligible to request to draw from the Bank.
  - 2) Employees must request in writing to the Personnel Administrator to draw from the Sick Leave Bank thirty (30) days prior to the needed time.
  - 3) Each request must be accompanied by a Doctor's Statement as to the medical need and estimated length of absence.
  - 4) Any sick or injured employee must use all of their own available leave time (sick, vacation, personal day, compensatory, administrative) before being eligible for time from the Sick Leave Bank.
  - 5) Employees will be eligible for the Sick Leave Bank once they have exhausted all of their leave time (sick, vacation, personal day, compensatory, administrative).
  - 6) An employee must have a reasonable expectation of returning to work in order to be eligible to draw from the Sick Leave Bank.
  - 7) Employees receiving Workers Comp will not be eligible for the Sick Leave Bank.
  - 8) An employee on maternity leave is eligible to apply to the Sick Leave Bank in cases of exceptional medical circumstances (for mom or child).
  - 9) Maximum time to be transferred to any employee will not exceed 480 hours per illness or injury.
  - 10) The Payroll Clerk will deduct the employee's accruals (vacation, sick) each pay period.
  - 11) Employees who have a catastrophic illness or injury and are able to work a modified work schedule may apply to the Sick Leave Bank.
7. Employees will have the option to donate any number of vacation/personal/professional leave hours to the Sick Leave Bank above and beyond the standard deduction set forth in Sec. 5.13.2.

(AR-2016-47; Incorporated into Personnel Policy 2015)

#### 5.14 Sick Leave Special Request and Donation

1. Donation. City employees will be allowed to donate vacation, professional, personal leave or comp time to another employee's sick leave at any time. This donation is for the benefit of those employees with minimal or no sick leave time accrued and are in need of time off for sick leave. There is a 20 hour minimum and no maximum on hours that can be donated. The time can be used for sick leave only and can be donated to any City Employee whether Full Time or Part Time.
2. Sick Leave Request.
  - 1) City employees will be allowed to donate vacation / professional leave / personal day to another employee's sick leave. The person requesting the special Sick Leave does not have to be a member of the Sick Leave Bank, however all other avenues of sick leave have to be exhausted before making the special request.
  - 2) All City employees will have access to this provision (including non benefit and part-time employees).
  - 3) The donation of time will be straight hour for hour; there will be no conversion of hourly pay scale to hourly pay scale.
  - 4) Human Resources will generate an email that states "A City employee is in need of (insert number) number of hours. Please respond if you would like to donate vacation hours to this employee."
  - 5) Once the number of hours requested by the individual, Human Resources will then generate an email stating "The number of hours requested has been fulfilled for this employee. Thank you for your donation. No additional hours are needed at this time."

#### 5.15 Bereavement Leave

~~Full time, part time, and probationary~~ All regular employees may take up to ~~five regularly scheduled days~~ one (1) regularly scheduled work week of paid *Bereavement Leave* per occurrence for a death in the immediate family (See Section 10 Definitions. *Family*). ~~Family members are defined as follows: spouse, son, daughter, mother, father, brother, sister, grandparent, grandchild, step-parent, step-child, step-sibling, foster/adoptive child, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law, or domestic partner.~~

In the event funeral services are being held at a location greater than 200 miles from the City of Aztec, the employee may be permitted to extend his or her bereavement leave using accrued vacation time, professional time, or the employee's personal day as approved by Supervisor.

Upon approval of the City Manager, the employee may be authorized a paid absence of one day to attend the funeral of a friend or relative not listed above. Payment for Bereavement Leave shall be computed at the bereaved employee's regular base rate.

### 5.16 Military Leave

1. Military Leave is a benefit which gives regular employees an opportunity to fulfill their annual active duty training obligation in the active reserves or National Guard.
2. Employees are asked to inform their Supervisors as soon as notification is received. Members of organized reserve units or the National Guard ordered to active duty training shall be given up to eighty (80) hours of paid military leave per calendar year. These eighty (80) hours are in addition to other leave benefits.
3. If the period of duty exceeds the eighty (80) hours, the employee may use accrued vacation leave, **professional leave**, or his/her personal leave day.
4. Employees on military leave with pay shall continue to accrue annual and sick leave.
5. This policy does not apply to temporary employees.
6. Veterans Day Observance – any employee who is a Veteran shall be provided Veterans Day off as an additional benefit, and shall be paid his/her regularly scheduled hours, provided this will not cause undue hardship within a department.

**Reference:** [The Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#)

### 5.17 Jury Duty/Court Leave

Regular employees are authorized to be absent from duty without loss of usual pay when required to serve as a juror or witness for any federal, state, or local court of law. Employees are required to advise their Supervisors of potential dates as soon as possible. Compensation for such service is outlined in [Section 4.21](#).

City employees who are required to serve on a local (San Juan County) jury shall record time served as regular time. Any compensation received by the employee from the local courts shall be the employee's property. There is no reporting requirement to the City.

(AR-2005-09; Incorporated into Personnel Policy 2012)

### 5.18 Family and Medical Leave

**Title:** [Family and Medical Leave Act \(FMLA\)](#)

**Purpose:** The FMLA gives eligible employees the right to take up to twelve (12) weeks of unpaid leave or paid leave, if it has been earned, in any 12-month period. Employees are required to use accrued paid leave (vacation, sick leave, etc.) as all or part of the 12-week entitlement. Employees on Family and Medical Leave shall continue to accrue vacation and sick leave benefits.

**Eligibility:** Defined as "A family and/or medical leave of absence shall be defined as an approved absence available to eligible employees for up to twelve weeks of unpaid leave (or paid leave if it has been earned) per year."

Leave may be taken for the following reasons:

1. For the birth and care of the employee's newborn child;
2. For the placement with the employee of a son or daughter for adoption or foster care;
3. To care for an immediate family member (spouse, child, or parent) with a serious health condition;
4. To take medical leave when the employee is unable to work because of his/her own serious health condition.

FMLA was amended to provide the following new military family leave provisions for specified relatives of service members:

Employees who have a spouse, parent, or child, who is on or has been called to active duty in the US Armed Forces may take up to twelve (12) weeks of FMLA leave yearly when they experience a "qualifying exigency."

Employees who are the spouse, parent, child, or next of kin, of a service member who incurred a serious injury or illness on active duty in the US Armed Forces may take up to twenty-six (26) weeks of leave to care for the injured service member in one 12-month period (in combination with regular FMLA leave).

Scope. The provisions of this policy shall apply to all family and medical leaves of absence, except to the extent that such leaves are covered under other paid employment benefit plans or policies for any part of the twelve weeks of leave to which the employee may be entitled under this policy. In other words, if an employee is entitled to paid leave under another benefit plan or policy, the employee may be required to take the paid leave first.

Eligibility. To be eligible for leave under this policy, an employee must have been employed for at least twelve months in total, and must have physically worked at least 1,250 hours during the twelve month period preceding the commencement of the leave.

Procedures:

1. A request for *Family and Medical Leave of Absence Form* must be originated by the employee. This form shall be completed in detail, signed by the employee, submitted to the Supervisor for proper approvals, and forwarded to the Personnel Administrator. An employee must provide at least thirty (30) days advance notice before FMLA Leave is to begin if the need is foreseeable (i.e. planned medical treatment for a serious health condition of employee or family member, expected birth, military leave etc.)

In the event of an emergency, where thirty (30) days cannot be given, notice must be given as soon as possible. Leave may be denied if the need was foreseeable and 30-day notice was not given.

2. All requests for family and medical leaves of absence due to illness shall include the following information attached to a completed Request for Family and Medical Leave of Absence:
  - 1) Sufficient medical certification stating the date on which the serious health condition commenced;
  - 2) The probable duration of the condition; and

- 3) The appropriate medical facts within the knowledge of the health care provider regarding the condition.
- 4) In addition, for purposes of leave to care for a child, spouse, or parent, the certificate should include the estimated amount of time that the employee is needed to provide such care. For purposes of leave for an employee's illness, the certificate must state that the employee is unable to perform the functions of his/her position. In the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment must be stated.

**Note:** The FMLA provides for a continuation of benefit payments for qualifying events.

Effect of Labor Agreement: All provisions of this policy shall prevail as modified by any applicable labor agreement.

Provisions Not Addressed in Policy: Any provisions not addressed in this policy will be governed by the Federal Family and Medical Leave Act and any amendments.

### 5.19 Disability Pay Status

1. When the employee is drawing disability benefits as a result of on-the-job illness or injury, the employee may continue as a participant in the City's group insurance. The employee is responsible for his/her portion of the premium. The employee in this status shall be designated for payroll purposes as being on Leave with Pay.
2. In the case of any disability insurance leave taken in excess of forty (40) hours, the City has the right to require the employee to periodically inform the Department Head of the expected remaining duration of the leave. Therefore, employees will contact their Department Heads weekly by telephone and monthly in writing as to their expected duration of leave.

### 5.20 Holidays

1. In lieu of holiday pay, regular full time and part time employees will accrue additional vacation time instead of holiday pay. Employees will be required to use available leave on recognized holidays or time will be Leave Without Pay. Hours are available for use after six months of employment. The amount of vacation time accrued will be based on years of service as defined in 5.4

0-4 years:

Bi-weekly rate  $3.8464\% \times 80 \text{ hrs} = 3.08$  ( $3.08 + 3.8462 = 6.9262$  bi-weekly hours accrued)

5-14 years:

Bi-weekly rate  $5.7693\% \times 80 \text{ hrs} = 4.62$  ( $4.62 + 3.8462 = 8.4662$  bi-weekly hours accrued)

15+ years:

Bi-weekly rate  $7.6928\% \times 80 \text{ hrs} = 6.154$  ( $6.154 + 3.8462 = 10.00$  bi-weekly hours accrued)

Maximum accrual of total vacation hours are defined in Section 5.5.

### 5.21 Voting Leave

All City employees who are registered to vote in primary, general, and municipal elections shall be allowed up to two hours off from work to vote if they are unable to vote in the hours provided for voting. Employees requesting time off to vote must be registered voters, and must coordinate absence from their duties with Supervisors so as not to adversely impact City operations.

### 5.22 Leave Requests

Each eligible employee must submit a request in advance of the time he/she elects to be absent from regular duties. Exceptions may be made in cases of illness, accident, or emergency. These exceptions require the employee to complete the leave request within the pay period or upon return to work.

Requests for leave do not guarantee that the request will be approved. Supervisors shall consider each request on a case-by-case basis. Approval shall be considered in terms of workload, staffing levels, and availability of personnel, timeliness, and other job-related factors. Leave requests shall be approved by Supervisor.

Exempt employees that plan to take leave less than half of their regularly scheduled work day do not need to submit a formal leave request unless they do not work a total of the 40 hours required to work in the work week. However, the exempt employee shall formally request leave through email, phone, text message or in person and complete the appropriate documentation on their time card upon return.

### 5.23 Inclement Weather Leave

It is the policy of the City of Aztec to remain open and conduct normal city business in all kinds of weather, unless the City Manager and/or Chief of Police determine conditions are so severe that travel is prohibited.

In the event of inclement weather that decreases the safety of our streets and roads, the City will operate under a delayed schedule:

1. If the City school system delays classes for 2 hours – City offices will open at 10:00 am.
2. If City school system closes for the day – City offices will open at 10:00 am. The decision to close city offices will be determined by City Manager and/or Police Chief. This decision is based entirely upon the concern for the overall safety of employees.
3. Any employee may come to work before City offices are open to the public, however employees are asked to use their best judgment in determining the safest route.
4. Department Heads may allow employees to report to work at different times due to weather conditions at and near his/her home, however department heads are responsible for the daily functions of the department.
5. All essential staff must report to work taking extra precautions when driving. Essential staff include; Police, Public Works, Electric and any other department that is deemed essential by the City Manager.

The City Manager will make the official call **as early as possible but no later than 6:00 am (for 10 hr days) and 7:00 am (for 8 hr days)**. The City Manager will **text notify** all department heads.

Department heads are responsible for establishing notification procedures within their respective departments and advising employees of city delays or closings.  
(AR-2010-27; Incorporated into Personnel Policy 2012)

**Note:** Information Technology (IT) Department will be responsible for alerting the local news media and placing information on both the City website and other media sites (Facebook, Twitter, television, radio, etc.)

## 5.24 Domestic Abuse Leave

It is the policy of the City to grant up to 14 days per **calendar** year of paid or unpaid leave to employees who are victims of domestic abuse to secure an order of protection, meet with attorneys, and attend court related proceedings (New Mexico State Law - Domestic Violence).

### 1. Definitions:

#### Domestic Abuse

An incident of stalking or sexual assault, whether committed by a household member or not, or any incident by a household member against another household member that results in:

- 1) Physical harm;
- 2) Severe emotional distress;
- 3) Bodily injury or assault;
- 4) A threat causing imminent fear of bodily injury by any household member;
- 5) Criminal trespass;
- 6) Criminal damage to property;
- 7) Repeatedly driving by a residence or work place;
- 8) Telephone harassment;
- 9) Harassment; or
- 10) Harm or threatened harm to children.

#### Household Member

A spouse; former spouse; family member, including a relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child; or a person with whom the petitioner has had a continuing personal relationship.

### 2. An employee who experiences domestic abuse may take up to 14 days per calendar year to:

- 1) Pursue an order of protection or other judicial relief.
- 2) Meet with law enforcement officials.
- 3) Consult with attorney, district attorney, or victim advocates.
- 4) Attend court proceedings for themselves, their child or a child for whom they are a legal guardian.

### 3. Procedures/Verification.

Employees requiring domestic abuse leave in an emergency must notify their Supervisor within 24 hours of starting leave. Otherwise, employees requesting domestic abuse

leave must provide as much notice as possible of the circumstance. The verification may be a police report regarding the incident, a copy of an order of protection, or other court evidence such as a written statement from the employee's attorney, district attorney, victim advocate, or prosecuting attorney stating that the employee, employee's child, or child for whom the employee is a guardian is scheduled to appear in court.

4. Privacy.

All information received from the employee shall be kept confidential. The City shall not withhold benefits coverage from an employee during the time he/she is on domestic abuse leave.

### 5.25 City Manager Discretionary Early Leave

At the discretion of the City Manager, additional hours may be provided to employees to attend city events, Employee Association functions, and/or paid holiday observance. These hours are at the discretion of the City Manager and is not time employees should plan on receiving. If the hours are provided by the City Manager, employees scheduled to work those hours would record the hours not worked as Leave With Pay. Employees not working the day of discretionary leave (regular day off, vacation, sick, etc.) do not benefit from the discretionary leave.

(AR-2009-24; Incorporated into Personnel Policy 2012)

### 5.26 Hardship Payout of Vacation and/or Sick Leave

Providing that funds have been included in and are available in the budget, an employee may request payout of vacation and/or sick leave due to an economic hardship. An economic hardship occurs when an employee is unable to pay reasonable basic living expenses (expenses that provide for health, welfare, and production of income of the employee and their family). The determination to allow such payout will be made by the City Manager **[or committee like we do with sick bank?]** and will vary according to the unique circumstances of the employee. The request must provide one of the following specific criteria used to make the determination of hardship.

1. Unreimbursed medical expenses for you, your spouse, or dependents.
2. Purchase of an employee's principal residence.
3. Payment of college tuition and related educational costs such as room and board for the next 12 months for you, your spouse, dependents, or children who are no longer dependents.
4. Payments necessary to prevent eviction of you from your home, or foreclosure on the mortgage of your principal residence.
5. For funeral expenses.
6. Certain expenses for the repair of damage to the employee's principal residence.

If the request is approved, the Finance Department will reduce the total number of hours approved for payout by the following:

1. Vacation may be paid to the employee based on the total number of hours available at the last completed pay period from the request date.
2. Sick leave may be paid to the employee based on years of service and 1/3 of the total number of hours (the selling of 3 days of sick leave for the value of 1 day) available at the last completed pay period from the request date.
3. Payout is taxable.

## SECTION 6. DISCIPLINARY ACTION AND TERMINATIONS

### CHANGES: 6.2

#### 6.1 Purpose

The City expects employees to perform their assigned duties at or above satisfactory levels; to follow accepted standards of workplace behavior; and to comply strictly with all laws, rules and regulations.

#### 6.2 Grounds for Disciplinary Actions

Listed below are some, but not all, of employee actions which are reasons for disciplinary action or automatic termination. *This list is not exclusive. Incidents requiring discipline shall be handled on a case-by-case basis.*

1. Probationary Employees. At any time during the probationary period, or any extensions thereof, an employee whose performance does not meet the required standards of the position shall be terminated if the Supervisor does not believe that an extension of the probationary period would be of benefit. In such cases, the employee does not have the right to the grievance procedure since the probationary period is the final step in the selection process of regular employees.
2. Obtaining employment on the basis of false or misleading information.
3. Insubordination.
4. Continued unsatisfactory performance of duties.
5. Failure to work overtime when directed to do so by a supervisor.
6. Working hours not authorized by Supervisor.
7. Unwillingness of an employee to work satisfactorily with others; specifically due to any type of discrimination because of race, color, religion, sex, national origin, age, disability, sexual orientation and gender identity, ancestry, physical or mental handicap, serious health condition, spousal affiliation, or any other legally protected status.
8. Violation of safety rules and policy which endangers oneself, other employees, or the public.
9. Willful, negligent or careless operation or maintenance of city equipment.
10. Use of foul or inappropriate language that is offensive to other employees, or the public.
11. Violation of the Drug and Alcohol Policy.
12. Any employee convicted of a second or subsequent DWI Offense, in accordance with NM Self Insurers Fund Policy, shall be excluded from coverage.

13. Any employee exceeding 6 points in a twelve (12) month period on their driving record, in accordance with NM Self Insurers Fund Policy, shall be excluded from coverage.
14. Loss of driver's license.
15. Unauthorized absence(s).
16. Continual tardiness.
17. Conflict of interest which results in private gain to the employee or detriment to City.
18. Coercion, intimidation, assault (including sexual assault), or threat of reprisal to any other employee.
19. Harassment of any kind on or off work premises, at any time (during work or after work hours), through means of text messaging, emails, cyberbullying, phone calls, personal confrontation, **negative** gossip, city or privately owned computers or similar devices.
20. Any employee activity which is found to substantially affect or lead to diminishing of the integrity, efficiency, or discipline of city service.
21. Theft or willful destruction of city property or co-workers property.
22. Acceptance of bribes.
23. Employees charged with criminal activities. (Employees may be placed on Administrative Leave with Pay or Leave without Pay pending final determination, or may be assigned other duties pending a final outcome of the matter. Each situation under investigation shall be administered on a case-by-case basis. The City Attorney shall review each case and advise the Supervisor, the Personnel Administrator, and the City Manager.
24. Fraud, embezzlement, or vandalism from the City.
25. Abuse of legitimate grievance processes resulting in repeated unsubstantiated claims.
26. Conviction of a felony the following shall apply:

Any employee who is indicted for a felony or who is bound over to District Court may, unless incarcerated, be retained on duty in present position pending final disposition of the matter by a court of law. *Exception:* If the crime for which the employee has been indicted or bound over is due to an alleged impropriety against the government or is of heinous or repugnant nature, the City reserves the right to suspend employment (without pay) until the matter is resolved. No employee charged with theft, fraud, embezzlement or vandalism against the City will be allowed to work until final disposition has been made. If the employee is vindicated the section below shall apply.

If incarcerated the employee may be placed on Leave without Pay. If the crime of which the employee is accused involves a tort or injury to a fellow employee, then the

employee who is alleged to be the victim may request leave. Leave with pay for the victim shall be approved by the City Manager.

27. Any employee accused of using his/her position with the City for personal gain or to intimidate, coerce, implicate, or influence another citizen, or to obtain special favor or consideration, shall be placed on Leave without Pay pending thorough investigation of the allegation. Legal authority shall immediately be consulted for investigation and recommended action in such matters.
28. Violation of the City of Aztec Procurement Policy, established procurement procedures, and/or Chapter 13 Public Purchases and Property NMSA 1978.

### 6.3 Vindication

If the employee is vindicated of a charge or complaint made by City officials or of a charge directly related to the employee's City duties, retroactive payment and benefits for the period of absence shall be made. However, no retroactive payment for the period of absence without pay shall be made if incarceration is not due to City-related complaint. Reimbursement of benefits may be recommended. Any time an employee is absent without pay, in excess of one (1) month, this time shall not count towards longevity, vacation or sick leave accrual.

**Note:** *These rules do not represent every conceivable type of offense, but reflect those most frequently encountered. Penalties imposed as a result of infractions of the rules may be modified by the City when extenuating circumstances are found. Likewise, flagrant infractions of the rules of conduct may result in action of greater severity.*

### 6.4 Disciplinary Actions – Verbal, Written, Suspension and Termination

Verbal Reprimand. If an employee commits a violation of work rules, City policy, or procedure, the Supervisor shall verbally notify the employee that an official warning is being given. The Supervisor shall outline and document possible solutions to correct the problem.

Written Reprimand. A written reprimand given by the Supervisor shall be entered into an employee's personnel record, subject to the Right of Appeal and Review in accordance with the procedures provided in [Section 7](#). Notification of action must be given to Personnel Administrator.

Suspension. If employee does not respond to the first two steps in the progressive discipline policy, employee may be suspended, depending on the seriousness of the situation. The suspension notice shall include a final warning indicating that termination could be the next step in the process. Employees shall have the right to appeal as specified in [Section 7](#). All suspensions from work shall be entered into an employee's personnel record. A Supervisor may suspend an employee from work without pay for flagrant violation or disregard of work rules, personnel policies, and regulations for varying periods of time approved by the Supervisor and the City Manager. Any suspension of more than five (5) scheduled days shall require a hearing (unless waived by employee). Notification of action must be given to the Personnel Administrator.

An employee who receives a suspension shall be provided by the supervisor an *Employee Action Plan* upon returning to work. The *Employee Action Plan* shall detail the areas, actions and goals necessary to improve the employee's performance. An employee's failure to meet the *Employee Action Plan* will result in termination.

Termination. Employees who fail to respond to the first three steps in the disciplinary process or meet the goals set forth in the *Employee Action Plan* shall be terminated.

**Note:** *Flagrant disregard for policies, procedures and regulations may warrant immediate termination as approved by the City Manager. Notification of action must be given to Personnel Administrator.*

## 6.5 Termination or Resignation

Voluntary Termination. When an employee decides to leave employment, he/she shall submit written notice to his/her Supervisor by either email or written paper form (phone text messages are not acceptable). The employee is encouraged to give at least two weeks' notice prior to departure. Proper notice shall become part of the employment record. All City property including, but not limited to, keys, laptop computers, vehicles, tools, uniforms etc., must be returned at separation. Employees who resign voluntarily are asked to complete an exit interview that will help the City pinpoint any areas of employee dissatisfaction.

Involuntary Termination. This action may be initiated for any violation(s) as outlined in 6.2. Employee shall be presented with a Termination Notice prior to actual termination and with written notice of the reason(s) for termination. All City property including, but not limited to, keys, laptop computers, vehicles, tools, uniforms etc., must be returned at separation.

Layoff. Layoff is defined as severance of an employee from the work force due to lack of work or funding allocation. Layoff is made without prejudice and is not the fault of the affected employee.

If a position is available for which work and funds are available, an employee may accept a demotion or transfer to avoid a layoff, but only if the employee is otherwise qualified for the new position and a position exists.

An employee laid off shall have the first right of refusal if his/her position becomes open in the future.

Selection for Layoff. When more than one employee is in a position which has been scheduled to be discontinued, the following criteria may be considered to identify which person is to be laid off:

Versatility and/or value to the department  
Overall job performance as compared to others within the department  
Longevity within the department  
Longevity with the City.

1. Termination Notice. Employees who have completed probation must be presented with a Termination Notice prior to actual termination. The termination notice shall include:

- 1) Written notice of the reason(s) for the termination.
- 2) Time frame of various actions. (Refer to [Section 6.5](#))

## 6.6 Predetermination Hearing

The procedures for terminating, demoting, or suspending a regular, full-time or part-time employee who has completed probation are as follows:

1. The Supervisor shall notify the affected employee; both orally and in writing, of his/her recommendation to terminate, demote, or suspend the employee from City service, and reason(s) for doing so.
2. The Supervisor who initiates such action shall complete a *Notice of Intent to Terminate, Demote or Suspend* form. The completed form shall include:
3. The recommended effective date, the reason(s) and relevant documentation to support termination, demotion, or suspension.
4. Such documentation shall be attached to the notice. A copy of the notice and supporting documentation shall be furnished to the employee at time of oral notification.
5. If employee requests a hearing, Supervisor contacts Personnel Administrator for date, time, and location of hearing. The hearing shall take place within ten (10) workdays of notice.
6. Upon requesting a hearing the employee shall be placed on Administrative Leave utilizing vacation, professional leave, and/or personal day, pending the hearing outcome. If employee has run out of leave, the employee shall be placed on Administrative Leave without pay. In case of demotion, the employee shall maintain his/her position pending the outcome of the hearing.
7. The City Manager is the hearing authority in the case of an appeal of a suspension or demotion. Employee and Supervisor shall present their cases. The appeal of a suspension or demotion is a personnel action. Internal personnel actions are a matter between the employee and the City and are not public hearings.
8. The City Manager shall notify the Personnel Administrator within three (3) workdays of final decision. The decision of the City Manager shall be final. The Personnel Administrator shall contact the Supervisor and employee within one (1) workday of the City Manager's final decision. In the case of an appeal of a termination refer to Section 6.7.

## 6.7 Appeal of a Termination

The Personnel Administrator or City Manager shall appoint an external or internal Hearing Officer to hear the appeal of a termination.

1. Personnel Administrator. The Personnel Administrator shall record the hearing. The Personnel Administrator shall maintain the original recording for a period of six (6) months.

2. Authority of Hearing Officer. The appointed hearing officer shall have authority to:
  - Review all documents pertinent to the case including the employee's personnel file;
  - Rule on the relevance or other admissibility of evidence;
  - Question the parties and their witnesses, if any;
  - Reprimand or exclude from the hearing any person for improper or contemptuous conduct;
  - Take any other action consistent with this regulation, the Aztec City Code, the laws of the State of New Mexico and the laws of the United States.
3. Parties and Representation. The parties are the City of Aztec and the employee. One person such as legal counsel or other representation may be present at the hearing for each party to confer with. The employee must notify the Personnel Administrator twenty-four (24) hours prior to the time of the hearing if legal counsel will be present.
4. Witness/Witnesses. The employee must notify the Personnel Administrator twenty-four (24) hours prior to the time of the hearing if witness or witnesses will be present to testify on his/her behalf.
5. Conduct of Hearing. Every party to the proceedings shall have the right to present his/her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The hearing officer shall be the judge of the relevance of the evidence offered.
6. Closed Meeting. The appeal of a termination is a personnel action. Internal personnel actions are a matter between the employee and the City and are not public hearings. Those permitted to attend are the representatives of the City and the employee and his/her representative(s).
7. Decision of the Hearing Officer. The Hearing Officer shall forward his/her statement of findings and conclusions, based on the evidence presented at the hearing, to the City Manager for review. The City Manager shall make a final decision within three (3) workdays and notify Personnel Administrator.
8. Findings and Conclusions. The Personnel Administrator shall notify the employee and the Department Head orally within one (1) workday of the City Manager's final decision. A copy of the findings and conclusions shall be provided to the employee when requested, and shall be included in his/her personnel file.

## **6.8 Abolishment of Positions**

The City Manager can abolish a position which is no longer needed within the City work force.

**6.9 Disbursement of Final Paycheck (Voluntary)**

When an employee resigns his/her position, the earned salary or wages plus any other compensation (such as annual leave accrual) shall be due and payable on the next regular payday, or paid out over a period of time as requested by employee.

**6.10 Disbursement of Final Paycheck (Involuntary)**

When an employee is terminated from employment, the earned salary or wages plus any other compensation (such as annual leave accrual) shall be due and payable (in accordance with FLSA) no later than five (5) days following termination.

**SECTION 7. EMPLOYEE ETHICS, GRIEVANCES & DISCRIMINATION  
COMPLAINTS****NO CHANGES****7.1 Employee Ethics**

City employees may not use their positions for personal gain or to give unwarranted benefit or treatment to any person. The City recognizes and respects the employee's right to engage in activities outside his or her employment which are private in nature and do not in any way conflict with, or reflect poorly on the city. The City reserves the right, however, to determine when an ethics violation has taken place.

1. Misuse of Official Position. City employees may not use their official position to secure employment or obtain contracts from other organizations, accept pay from anyone other than the City for the performance of their official duties, take or withhold official action on a matter in which they have an outside personal or financial interest; use City time, equipment, property, or facilities for personal and/or financial benefit; or coerce subordinates in any manner which will result in outside financial benefit to the Supervisor.
2. Improper Gifts. City employees may not accept gifts of any value greater than twenty-five dollars (\$25.00) that benefit the employee's personal or financial interest if it can be reasonably inferred that the gift is intended to influence the employee's actions or judgment. Any gift received by an employee, whose action can affect the giver, must be reported to the employee's Supervisor immediately. Gifts include money, items of value, services, loans, travel, entertainment, hospitality and employment.
3. Improper Use or Disclosure of Information. No City employee may use or disclose any information gained from City employment if the use or disclosure could result in a financial or personal benefit to the employee and no information shall be disclosed to a family or household member, unless that information has already become public. No current employee may use or disclose confidential information acquired during employment.
4. Improper Influence in Grants, Contracts, Leases or Loans. No City employee whose action or inaction can affect the award, administration of a City grant or contractor loan, may apply for, be a party to or have an interest in that city grant, contract or loan.
5. Improper Representation. No City employee may accept outside payment or financial benefit to represent, advise, or assist an individual in any matter being handled by the employee's administrative department.
6. Conflicting Financial Interests. An employee who has substantial financial interest or who acquires such interests, directly or indirectly, in any corporation, firm, or person who contracts with the City shall disclose that interest in writing to the City Manager.
7. Legal Requirements. No employee will do anything in the conduct of business which would violate any local, state, or federal law.
8. Aiding a Violation of Employee Ethics Policy. Aiding another City employee to violate this policy is prohibited.

## 7.2 Ethics Violation Procedure

1. Complaints about the ethical conduct of a current City employee shall be filed in the City Clerk's Office.
2. The Personnel Administrator shall forward a copy of the complaint to the employee's supervisor.
3. The Supervisor shall review the written documentation to determine whether a violation exists. The Supervisor must forward a response to the Personnel Administrator within five (5) workdays of receipt.
4. If determined a violation occurred the Personnel Administrator shall select the Ethics Policy Review Committee to investigate the complaint. (City Commission shall review all facts in a closed session when complaint filed is directed against the City Manager.)
5. The Ethics Policy Review committee shall consist of three individuals as determined by the Personnel Administrator. The committee shall within three (3) workdays of receipt of the complaint review and issue a written memorandum to the City Manager (copy to the Personnel Administrator) with recommendation for discipline.
6. Upon receipt and review of the recommendation from the Ethics Committee the City Manager shall determine the type of discipline up to and including termination, within three (3) workdays.
7. The City Manager or Personnel Administrator shall notify the employee of the disciplinary action.

## 7.3 Employee Grievance

Every eligible employee with a grievance shall have the privilege of presenting the grievance in accordance with the following procedure without fear of reprisal. The following definitions apply to this section:

### Eligible Employee

Any regular full-time and regular part-time employee. The City Manager, temporary employee, and probationary employees shall not have access to the grievance procedure.

### Grievance

A formal, written complaint from an employee concerning actions or inactions taken by an employee or the City. The written complaint can be in the form of a letter or email. If by email, the Subject: line should contain the following statement: "Official Personnel Complaint."

**Note:** Promotions, demotions, reclassifications, transfers, reassignments, performance reviews, or changes in shift rotations may not be grieved by an employee unless they are a direct consequence of a disciplinary action to that employee.

The grievance process involves the following steps:

1. First, an attempt shall be made to resolve the matter through informal discussion with the employee's Supervisor or Department Head. This should be done within five (5) working days after the occurrence.
2. If the matter cannot be resolved informally, the employee shall submit a complaint in writing, to the Personnel Administrator within five (5) working days after Step One (1) has been attempted. The written grievance shall clearly define the problem and the request for corrective action. The Personnel Administrator may discuss the problem with the Supervisor/Department Head, or arrange a meeting with the employee and supervisor in an attempt to resolve the problem. If the complaint is not mutually resolved, proceed to next step.
3. The City Manager shall review all documentation for city employees. In the event the City Manager requires clarification, a meeting shall be scheduled with the employee and/or Supervisor. The City Manager's decision is final.
4. The City Commission shall review all documentation in a closed session when a complaint is filed against the City Manager.

#### **7.4 Discrimination, Harassment Complaint Procedures**

1. Procedure for Employee.

The City strives to maintain a working environment free from harassment; including sexual harassment or sexual misconduct, by any of its employees. Any individual who feels that he/she has been discriminated against or harassed by any City Employee, or a City policy or procedure because of race, color, religion, sex, national origin, age, disability, sexual orientation and gender identity, ancestry, physical or mental handicap, serious health condition, spousal affiliation or any other legally protected status, shall proceed as outlined below.

- 1) As soon as possible after the alleged discriminatory incident(s), the complainant shall submit a written complaint to the Personnel Administrator.
- 2) The Personnel Administrator shall begin an investigation immediately upon receiving the complaint. City employees are strongly encouraged to cooperate with an investigation and to be truthful with the investigator. Failure to be truthful may result in disciplinary action.
- 3) The Personnel Administrator or designee shall submit a written report of the findings to the City Manager.
- 4) The City Manager shall review the report, confer with City Attorney and determine whether a discriminatory or harassment practice has occurred.
- 5) Following the City Manager's determination, the Personnel Administrator or City Manager shall inform the complainant of the decision.

- 6) In the event the complaint is upheld, the City Manager shall proceed with disciplinary procedures consistent with existing City policy.

## 2. Procedure for City Manager

If the City Manager is accused of discriminatory or harassment incident(s):

- 1) As soon as possible after the alleged discriminatory incident(s), the complainant shall submit a written complaint to the Personnel Administrator.
- 2) The Personnel Administrator shall begin an investigation immediately upon receiving the complaint. City employees are strongly encouraged to cooperate with an investigation and to be truthful with the investigator. Failure to be truthful may result in disciplinary action.
- 3) The Personnel Administrator (or designee) shall submit a written report of the findings to the City Commission.
- 4) In closed session, the City Commission shall review the report, confer with the City Attorney and determine whether discriminatory or harassment incident(s) has occurred.
- 5) Following the City Commission's determination, the Personnel Administrator shall inform the complainant of the decision.
- 6) In the event the complaint is upheld, the City Commission shall proceed with disciplinary procedures as deemed appropriate.

## **7.5 Responsibilities of Supervisors**

1. Responsible for creating an atmosphere free of discrimination and harassment.
2. Responsible for insuring all employees are informed of this policy and the penalties for violation.
3. Responsible for reporting complaints of discrimination or harassment in an expeditious manner to the Personnel Administrator.
4. Retaliation against an employee by co-worker(s) and/or supervisor(s) for making a complaint is strictly prohibited and may result in disciplinary action, up to and including termination

## **7.6 Responsibilities of Employees**

1. Employees are responsible for compliance with this policy and for respecting the rights of their co-workers.
2. Retaliation against a co-worker for making a complaint is strictly prohibited and may result in disciplinary action, up to and including termination

## SECTION 8. EMPLOYEE PERFORMANCE REVIEWS

### CHANGES: 8.4

#### 8.1 Purpose

The performance evaluation provides a means for discussing, planning, and reviewing the performance of each employee. In addition to these formal performance evaluations, supervisors and employees are encouraged to discuss job performance on a frequent and ongoing basis.

Regular performance evaluations:

- Help employees clearly define and understand their responsibilities;
- Suggest ways in which employees can improve performance;
- Identify training needs;
- Provide a forum for goal setting;
- Provide a fair basis for awarding compensation based on merit or other compensation as identified by City Manager and approved through the budget process.

#### 8.2 Performance Review Schedule

All regular employees (full-time and part-time; as defined in [Section 3.2 Subsections 1-4](#)) shall be given a performance review on the following occurrences:

1. At the completion of the probationary period, *Employee Action Plan*, or other times as deemed necessary by a Supervisor; and
2. Yearly - on anniversary date or promotional date as designated by the Personnel Administrator and approved by City Manager.

#### 8.3 Review Coordination

Initiation of the performance review shall be the primary responsibility of the Supervisor. The Personnel Administrator shall maintain a schedule of performance evaluation timetables.

#### 8.4 Evaluation Review

1. The Supervisor will be available to meet with the employee to review the evaluation.
2. Employee shall be responsible for following through on goals, objectives and comments as noted on the evaluation.
3. Each employee has the right to comment on his or her performance review. If the employee chooses to do so in writing, such comments shall be included in his/her personnel file.
4. The performance evaluation shall be signed both by the employee and supervisor **within four (4) work days of the employee receiving their evaluation.**
5. A performance review does not always result in an automatic salary increase.

6. No presumption of performance shall be made in the absence of a performance review.
7. When necessary, the Supervisor may create a Performance Plan for an employee who does not evaluate well. The Performance Plan will identify areas where improvement is required and how those improvements can be achieved in order to improve their future evaluation.

#### **8.5 Responsibility and Action Steps**

1. The evaluation forms provided by the Personnel Administrator shall be accessible to Supervisors.
2. All performance evaluations shall be forwarded to the City Manager.
3. The City Manager shall forward the evaluation to the Personnel Administrator for review then the Personnel Administrator will process the Personnel Action form.
4. The completed evaluation shall be retained in the employee's personnel file after all appropriate signatures are obtained.

#### **8.6 Merit Increases**

1. Merit increases for the current fiscal year are established in the *Employee Evaluation Scoring and Merit System* form which can be found on the City's Intranet.
2. Regardless of evaluation, no merit increase is available if an employee has reached the maximum level in their respective grade in the pay plan.

## SECTION 9. PERSONNEL RECORDS

### CHANGES: 9.9

#### 9.1 Disclosure of Personnel Information

All requests for information about an employee shall be referred to the Personnel Administrator. The Personnel Administrator may disclose dates of employment, final title or position, wage or salary levels and work location.

#### 9.2 Signed Authorization for Disclosure of Personnel Information

The Personnel Administrator shall also respond to requests for eligibility for rehire (whether or not a two week notice was given) and reason for separation or termination, with a signed release from current or former employee. The release shall be filed in the employee's personnel file.

#### 9.3 Disclosure of Personnel Information to Law Enforcement Agencies

Information shall be given to duly authorized requests from law enforcement agencies, including investigators, summonses, subpoenas and judicial orders. Information not deemed confidential within a personnel file is considered public information, as published in the Public Records Act.

The City need not inform an employee that personal information has been disclosed to law enforcement agencies if it concerns an investigation into the employee's on-the-job conduct, especially when an employee's actions endanger other employees, city security, or property.

#### 9.4 Personnel Records

The Personnel Administrator shall maintain a complete file of each employee's records containing information as determined by established law, in a secure location.

Each Supervisor may maintain a file on each employee in his/her charge, including performance evaluations, attendance records, notes, memos or letters, or other information relating to an employee's job and personal performance. At least once a year, information in the department file is reviewed and, when appropriate, purged.

The City has a commitment to the privacy of confidential information kept in its personnel records. The City uses only ethical and lawful means to gather information about or from an applicant or employee. Whenever reasonable, the City gathers it directly from the employee concerned. Personal information about an employee which is not job-related shall not become part of an employee's file. Personnel payroll data and medical records shall be kept separately from the personnel file.

#### 9.5 Inspection of Personnel Records

Employees may examine personnel records in accordance with state law. Employees have the right to request a correction, ask for a deletion or write a statement of disagreement with any item in the file. Files may not be removed from the Personnel Office.

#### 9.6 Corrections of Personnel Records

The following are procedures for requesting corrections of personnel records:

1. Submit request in writing to the Personnel Administrator outlining the request to correct documentation and the reasons.
2. The written request shall be reviewed by the City Attorney and Personnel Administrator.
3. If the request is granted, change(s) to documentation shall be made by Personnel Administrator.
4. If request for correction is denied, a statement of disagreement may be written and presented to the Personnel Administrator for inclusion in the employee's file. This statement becomes permanent documentation in the file.

### **9.7 Personnel File Contents**

The file shall contain the following:

- The original employment application.
- The job description of position for which employee was hired, including job description for transfer, promotion, and demotion.
- The originating personnel action showing occupation, date of beginning employment and salary.
- Copies of all letters of memorandums pertaining to job performance, regardless of origination.
- Records of certificates of educational training, achievements, and completion.
- Records of disciplinary actions, such as a reprimand, suspension, termination and grievances.
- Application for retirement program.
- Other related actions/forms concerning payroll deductions, merit increases etc.
- Medical documentation.
- Financial documentation.

Documents may be removed from the employee's permanent record upon written recommendation of legal counsel, if requested by the employee.

### **9.8 Personnel File Maintenance**

The above records shall be maintained in a secure accessible location.

Access to an employee's confidential personnel file shall be available to the respective employee, the City Manager, the Personnel Administrator, the City Clerk and the respective Department Head.

The Payroll Department shall keep records containing name, address, occupation, time sheets, rate of pay, total wages paid each pay period, vacation and sick leave accrual and use, and any other records necessary for computation of pay.

### **9.9 Former Employees**

Former employees may be given, (upon written request) copies of documents in his/her personnel file. ~~When a previous employee is rehired, a separate record file shall be prepared and maintained~~

## SECTION 10. DEFINITIONS

### CHANGES in RED

#### **Absenteeism**

All employees are expected to report for work on time and on a regular basis. Absence includes late arrival at work as well as early departure. Unnecessary absenteeism and lateness is disruptive, costly and places an unfair burden on other employees.

If the employee will be absent or late for any reason, he/she must notify the Supervisor prior to the beginning of his/her scheduled work day. Unexcused absence or chronic lateness will not be tolerated and shall result in disciplinary action.

Notification from another employee or relative is not acceptable, except under emergency conditions.

Notification to Supervisor shall be made by phone, text message or other electronic device, explaining reason for being absent or late.

An excused absence may include personal or family illness (as provided for in the Family and Medical Leave Act), jury duty, bereavement, or other reasons that would require the employee to miss all or part of a scheduled workday. The employee should be prepared to substantiate the reason for the absence. If the employee is absent frequently he/she may be required to furnish documentation, including medical statements from his/her doctor.

If the employee fails to give proper notification of his/her absence, or if the Supervisor considers his/her reason unacceptable, the employee will be charged with an unexcused absence. Employees will only be paid for time actually worked unless their absences fall under leave provisions.

An employee, who fails to contact the Supervisor for three (3) successive days, will be considered to have voluntarily resigned.

#### **Accident/Injury**

Every accident regardless of the seriousness must be reported to your supervisor. Every effort should be made to provide aid to the injured without risking further injury until medical help arrives (Refer to [Section 4.17](#)).

#### **Affirmative Action Plan**

The purpose of the Affirmative Action Plan is to recruit, employ, and promote the most qualified people based on the ability to perform the job sought, regardless of race, color, religion, sex, national origin, age, disability, sexual orientation and gender identity, ancestry, physical or mental handicap, serious health condition, spousal affiliation or any other legally protected statues. All job announcements and other notices concerning position vacancies shall explicitly state that "The City of Aztec is an Equal Opportunity, Reasonable Accommodation Employer."

Employment application forms shall contain the words; "Equal Opportunity Employer."

**Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act, Public Law 336 of the 101<sup>st</sup> Congress, enacted July 26, 1990. The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment. The City of Aztec is an Equal Opportunity Employer.

**Arrests**

Any employee arrested for a criminal violation or traffic offense must notify the Department Head of such within five (5) days of the incident.

**Breaks**

Two 15-minute breaks each day, one in the morning and one in the afternoon, may be provided if there is sufficient coverage. Employees are allowed to leave their workstation at this time. The Supervisor schedules breaks to ensure coverage at all times. There will be no accumulation of breaks. The 15 minutes include travel time to and from break. Field employees shall take breaks in the field at work site unless authorized by Supervisor to break elsewhere. FLSA does not require employers to give employees breaks.

**Cell Phones**

Refer to Section 4.18 Cell Phone Compensation. Actual compensation amounts will be established by Administrative Regulation.

**Change of Employee Information**

Certain data about employees is needed to satisfy legal requirements and insure efficient reporting. Information in employees' records must be correct to alleviate any problems that could arise regarding taxes, employee benefits, or paychecks. Report changes to the Personnel Administrator promptly on any of the following:

- Name
- Address
- Marital Status
- Telephone Number
- Dependents
- Person(s) to notify in case of an emergency
- Driver's License
- Insurance or retirement plan beneficiary
- Any limitations that require accommodation
- Medical plan coverage
- Courses completed

**Children and/or Pets at Work**

The City discourages employees from bringing their children and/or pets to work during their regularly scheduled work hours. However, certain circumstances may arise that would necessitate the need for special arrangements. In that case, the employee shall obtain approval from the Department Head or Supervisor.

**Citation**

Any employee issued a citation for a criminal violation or traffic offense must notify the Department Head of such within five (5) days of the incident.

**Conflict of Interest**

The City expects employees to observe the highest moral and ethical standards in any dealings in which they represent the City ([Section 7.1 for Employee Ethics](#)).

Employees are to avoid any activities that create a conflict of interest. A conflict of interest is not easy to define. Some types of conflicts are noted in this policy under “Moonlighting”, “Political Activities,” and “Ethics”. These are some but not the only conflicts that can trigger discipline. Various circumstances and relationships cited in City material might constitute a conflict of interest or violate the City’s ethical standards. While the City recognizes and respects employees’ rights to privacy to engage in personal activities outside the scope of employment, employees also have an obligation to refrain from activities that conflict or interfere with the City’s operations.

**Contagious Temporary Illness**

Below are examples of conditions that are indicators employee should not go to work or if at work employee should go home until improvement is made.

- Temperature of 100.4 or higher
- Vomiting
- Diarrhea
- Infections of the eyes
- Any open wound with drainage that has not been medically treated
- Flu symptoms (fever, cough, headache, chill, sore throat, muscle aches, fatigue)

Practice good health habits – Get plenty of sleep, be physically active, manage stress, drink plenty of fluids, and eat nutritious food. Practicing healthy habits will help employees stay healthy during flu season and all year long.

**Dating**

The City discourages dating between co-workers. The City recommends that no dating be allowed between supervisors and subordinates. Each case shall be approached on an individual basis.

**Discrimination**

The City does not discriminate against anyone on the basis of race, color, religion, sex, national origin, age, disability, sexual orientation and gender identity, ancestry, physical or mental handicap, serious health condition, spousal affiliation, or any other legally protected status. The City does not base hiring, compensation, promotion, reduction-in-force, or any other employment decisions on the basis of an individual’s race, color, religion, sex, national origin, age, disability, sexual orientation and gender identity, ancestry, physical or mental handicap, serious health condition, spousal affiliation or any other legally protected status. All such decisions are based on specific job-related performance standards that can be measured objectively.

Any employee who feels that he/she has been discriminated against should report it to his/her Supervisor or to the Personnel Administrator and if not satisfied, continue with the grievance process ([Section 7](#)).

**Dress Code**

Refer to [Section 13 Dress Code Policy](#).

### **Employee Assistance Program (EAP)**

The City offers an Employee Assistance Program to all employees and their families to assist with personal and work related problems. Employees may seek assistance at anytime. Supervisors may recommend that employees utilize the EAP for assessment, treatment or treatment referral. Employee shall utilize leave (i.e. vacation, sick, personal day, professional leave) for necessary assessment and/or treatment. The EAP is strictly confidential and is designed to safeguard an employee's privacy and rights.

### **Equal Employment Opportunity**

It is the policy of the City that an individual's race, color, religion, sex, national origin, age, disability, sexual orientation and gender identity, ancestry, physical or mental handicap, serious health condition, spousal affiliation or any other legally protected status are not and shall not be considered in any personnel or management decisions.

### **Family**

Members are defined as follows: spouse, son, daughter, mother, father, brother, sister, grandparent, grandchild, step-parent, step-child, step-sibling, foster/adoptive child, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law, or domestic partner.

### **Fighting**

The City has a zero tolerance for physical fighting on City premises at any time, for any reason. If a fight does occur, the Supervisor shall interview all witnesses to get the facts as to who started the fight and why. Employee(s) will be expected to cooperate in any such investigation. Those found guilty of fighting will be subject to discipline, up to and including termination. Any employee who strikes a supervisor, manager, or any other employee, for any reason, shall be subject to immediate termination and possible criminal charges.

### **Hazardous Materials**

The City complies with all federal and state "Right to Know" laws, which means employees shall be made aware of any chemical hazards in the workplace. Keep accurate records of all hazardous materials entering the work area. Store them separately by hazard classes, such as acids, alkalis, flammable, or oxidizers. Storing them together is dangerous. Questions about how hazardous waste should be handled or stored must be referred to Supervisor immediately (*Reference Safety Policy*).

### **Health and Safety**

The health and safety of employees and others are of critical concern. The City intends to comply with all health and safety laws applicable to City business. Employees are to ensure that work areas are kept safe and free of hazardous conditions. Employees are required to be conscientious about workplace safety, including proper operating methods, and recognize dangerous conditions or hazards. Any unsafe conditions or potential hazards shall be reported to the immediate supervisor. Employees are responsible for complying with the Safety and Health Policy.

### **Inclement Weather**

Refer to [Section 5.23. Inclement Weather Leave](#).

**Illness on the Job**

Employee's who become ill at work shall notify his/her Supervisor for permission to go home or seek medical attention.

**Insubordination**

Refusal of a legitimate request or assignment or the use of obscene or otherwise objectionable language to a Supervisor or Manager is insubordination. It undermines the discipline and authority needed in the workplace and cannot go unchallenged. Insubordination may result in discipline, up to and including termination. Employees never have to carry out a request or assignment that is unsafe, may result in injury or death, or has no job-related connection. Unsafe acts or unsafe conditions are to be reported immediately to Supervisor or City Manager.

**Insurance**

The City shall provide eligible employees the opportunity to enroll in a group health, life and dental insurance program. An eligible employee includes regular full time employees or part-time employees who are scheduled to work at least 20 hours per week. The City shall pay a percentage as set by the City Commission. Information regarding the group insurance program is available upon request from the Personnel Administrator.

**Moonlighting**

The City depends on each employee to devote full attention and effort to the duties which have been assigned. Therefore, should an employee find it necessary to take an additional job, a letter stating the conditions of the second position must be submitted to the supervisor for approval prior to starting second job. Failure to comply may be grounds for disciplinary action, up to and including termination.

It must be realized that employment with the City is the employee's primary responsibility. Outside employment shall not be considered an excuse for poor performance, absenteeism, tardiness, or refusal to work overtime.

No employee shall accept employment with another company when that employment would present a conflict of interest. Such conflict would be most likely if the other company is a competitor or supplier of the City.

No employee should establish or maintain an outside business interest that would cause any type of conflict.

**Nepotism**

The City shall accept employment applications from relatives of employees. The Personnel Administrator, the Supervisor, the City Manager or other staff shall identify and resolve any potential conflict that may occur as a result of nepotism. ~~There are four situations which would prevent the City from hiring a relative of an employee, including elected officials.~~ There are five situations that would not allow an individual to hold employment (either Current or new hire) with the City of Aztec:

- (1) If one relative would supervise or have disciplinary authority over another. An employee is not permitted to work in a position where his/her Supervisor or Department Head is a relative.
- (2) If one relative would audit the work of another.

- (3) If the interest of either the relative or the employee, or the relative and the City would be in conflict.
- (4) If the hiring of relatives could result in a conflict of interest.
- (5) Related to an elected City of Aztec City Commissioner (effective as of Municipal Election 2018).

If any of the above situations are created through promotion, transfer, or marriage, one of the affected employees must be transferred (if position available) or terminated. If two employees marry they shall be subject to the same situations described above, unless state law or judicial decisions dictate otherwise.

### **Notice of Deposit**

Employees will receive an electronic copy of their Notice of Deposit to the employee's city and/or personal email. In the event email delivery is not possible, a paper copy of the Notice of Deposit will be generated. Department Heads will receive and be responsible for the distribution of the paper Notice of Deposit. There are no exceptions to a Notice of Deposit unless a paper check is generated due to a change in an employee's banking situation. An employee has 30 days to notify the Finance Department of new bank information.

### **Office Appearance**

In order to convey an image of efficiency and professionalism, and to prevent accidents or injuries, all City facilities should be kept neat and orderly. Employees should leave public areas such as the copy machine areas, coffee stations, conference rooms, restrooms, and kitchens in a clean and orderly condition.

### **Parking Facilities**

The City of Aztec provides parking facilities for the use of employees. There shall be no designated parking except for parking areas designated as handicapped. The City assumes no responsibility for damage to vehicles or theft of articles from vehicles while on City property.

### **Pay Day**

The normal payday shall be every other Thursday ~~when City is on a 4/10 schedule, otherwise payday shall be every other Friday~~ (26 pay periods per year). If payday falls on a bank holiday, payday shall be the previous business day. Applicable federal, state and local income taxes, as well as Federal Social Security taxes are withheld from each paycheck. The City reserves the right to obey all laws that pertain to paychecks including garnishments. Checks may be released early, but only in cases of emergency, and only after approval by the Supervisor. Report a lost check to Supervisor immediately.

All paychecks shall be issued through Direct Deposit. A Direct Deposit account must be established within 30 days of hire. Any paper checks and Notices of Deposits (NOD) are the responsibility of Department Heads. Final pay checks for terminated employees shall be through direct deposit or physically mailed, pending approval by department head.

### **Physical Examinations**

The City requires a pre-employment medical exam. Psychological testing may also be required. Employees being promoted or transferred may be required to undergo a physical examination. Declining performance or excessive absenteeism may also justify a medical exam.

**Political Activities**

Employees are encouraged to participate in the electoral process and support the political candidates of their choice. All such activity must be conducted on the employee's own time. Employees must not give the impression they represent the City or are acting on its behalf while taking part in political campaigning.

No campaign literature is to be distributed within City Hall, and no efforts should be made to convert other employees to a political cause during working hours. The City guarantees all employees freedom from political harassment. Employees who violate this policy are subject to discipline.

City employees who choose to run for the City Commission shall be required to resign their position with the City if elected. Employees who choose to run for any political office must do so on their own time. *Refer to Solicitation*

**Pregnancy**

The City does not discriminate on the basis of pregnancy, childbirth, or related medical conditions. Pregnancy is treated like any other medical condition. If an employee is able to perform her job safely and effectively, she will be permitted to work at all times during pregnancy. If she is unable to perform all necessary job functions, she will be treated in the same manner as other temporarily disabled employees. This may include alternative assignments, modified tasks, Disability Leave, Family Medical Leave or Leave without Pay. The City may require a pregnant woman to submit a doctor's statement concerning her inability to work before granting a leave of absence or paying sick leave benefits. The City shall comply with the American with Disabilities Act and the Family Medical Leave Act as they pertain to pregnancy.

**Protective Equipment**

It is the City's policy to provide and maintain safe and healthful working conditions. It is also the policy of the City to follow operating practices that will safeguard all employees and result in safe working conditions. The City shall furnish the required safety equipment to every employee whose work requires such equipment. Employees are required to follow the rules concerning the wearing of such equipment at all times without exception. Refusing to do so or removing equipment safe guards shall be considered an act of insubordination. The City considers safety violations extremely serious and discipline may include suspension or termination. Refer to City of Aztec Safety Policy and/or Departmental Policies.

**Records, Falsification of**

Appropriate discipline shall be imposed for falsification of any City documents pertaining to absence from work; claims made about injuries while on the job or on City premises, claims made on benefits provided by the City or government agencies, as well as any falsification of City communications or production records.

**References, Giving**

All requests for information about any employee shall be referred to the Personnel Administrator. *Refer to [Section 9](#).*

**Religious Accommodation**

It is the policy of the City to accommodate the religious beliefs of its employees whenever possible. The accommodation, however, cannot exert undue hardship on other employees or create a burden for the City. If the accommodation is not possible, the employee will be expected to assume his or her usual duties as previously scheduled.

**Retirement**

The State of New Mexico provides a retirement association (PERA – Public Employees Retirement Association) for all state and local government employees designed to reward career public servants and furnish security during retirement years. Employees should plan to begin processing for retirement at least three (3) months before the projected date of retirement. Disability benefits are available in some cases; inquire prior to termination of employment. *Refer to PERA website.*

**Safe Workplace**

The City is committed to upholding a high standard of safety to ensure the health and well-being of its employees and to provide safe and efficient services to the citizens of Aztec. Consistent with this commitment is the need to encourage a safe workplace by implementing a safety policy and safety manual. The City shall do all that is reasonable to prevent injury to its employees, and damage or injury to property and residents. *Refer to Safety Policy.*

**Sick Leave Bank**

Refer to [Section 5.13. Sick Leave Bank](#).

**Smoking**

Refer to [Section 15. Smoking Policy](#).

**Solicitation**

Contributions may not be solicited on City property by non-employees without the permission of the City Clerk. Distribution of written materials or solicitation of political issues on City premises shall be governed by New Mexico State Statute (*Refer to City Clerk*).

**Taxable Benefits**

Also known as fringe benefit is any property or service or cash (other than salary) provided by employer. Examples are:

1. Use of City owned vehicle by City employee to commute to and from work
2. Clothing (uniforms) provided by the employer for employees
3. Meals and lodging per diem
4. Educational expenses paid by employer

Any fringe benefit provided by the City is taxable and must be included in recipient's pay unless the law excludes it.

**Telephone, Calls Personal**

The telephone system is intended primarily to serve the needs of the City and it is essential that each employee keep personal use from interfering with that purpose.

If the employee has personal calls to make, attempts should be made to do so during non-work periods. Employees should minimize the number of personal calls they receive through the

City's telephone system and personal cell phones. Employees who abuse this policy may be subject to disciplinary action.

**Theft**

City property is a valuable asset and costly to replace. All employees must protect it from theft, loss, and damage. City property includes knowledge and information as well as physical goods. Any employee who violates this policy may be subject to immediate termination.

**Time Sheets**

Time sheets are required to be completed by all City employees. Time sheets should accurately reflect all hours worked; all absences to be compensated, and other types of leave.

At the completion of the pay period and after approval by the Supervisor, time sheets are forwarded to the Payroll Clerk. Time sheets shall be signed by the employee and approved by the Supervisor. All leave-requests shall be signed by the Supervisor.

Not reporting time accurately is grounds for disciplinary action, up to and including termination.

**Training**

The City may pay for expenses incurred for attending an accredited college or university class, training seminar, or certification program which is directly related to the employee's job and for which budgeted funds are available. Prior approval for all training is required.

In so far as possible, work schedules for employees may be adjusted to permit employee participation in an approved City training program. Probationary employees may be allowed to attend trainings and seminars when approved by their Immediate Supervisor and/or Department Head. College Classes and Certification Programs are available to regular full time employees at the completion of their probationary period. Covered expenses may include:

Apprenticeship Programs. Refer to Departmental Policy.

CDL Licensing.

The City shall pay for the initial licensing and DOT physicals required in obtaining a CDL when it is a requirement of the employee's job.

Obtaining a CDL requires a rigorous training and testing period, requiring study and self discipline. Each employee required to obtain a CDL must study and pass each requirement needed to obtain a CDL classification listed in their job description.

All academic studies for a CDL must be done by the employee on his/her own time.

Once an employee has successfully passed his/her written examinations and has been issued a CDL driving permit by the State Motor Vehicle Department (MVD), the City, depending on the department and staffing, may help and train an employee in preparation for taking the required driving examination.

Each employee is required to be declared fit for the job, according to federal standards, by a medical doctor or receive a medical waiver from the State MVD.

If an employee obtains additional endorsements that do not apply to the employee's work, the cost for the extra testing endorsement is paid out of pocket by the employee.

Physicals and drug screens as required by Department of Transportation (DOT) will be paid by the City only if CDL Licensing is a requirement of the employee's position, as outlined in the employee's job description and/or apprenticeship agreement. Failure to obtain **and maintain** a CDL shall result in disciplinary action including demotion or termination.

Renewals of a CDL license shall be paid by the employee.

#### Certification Programs.

The Department Head shall determine the need for certification within the department. The City shall pay travel and per diem for two out-of-town short schools per year per employee. (Examples: Water Wastewater, Finance Officer Certifications)

Unless the employee has a reason constituting an emergency, 100% attendance is mandatory.

At the completion of the short school, verification of grade must be submitted to the Personnel Administrator.

Departmental policies and job descriptions shall determine the requirements for continued employment as it relates to required certifications.

***Note: City Manager has the final decision when reviewing circumstances that may require employees to reimburse the City for costs associated with college classes or certification programs.***

#### College Classes.

Tuition, books, and fees shall be paid by the City at 100% for a grade of "C" or above or a grade of "pass" in a pass/fail course.

At the completion of the class, the employee must submit verification of the grade to the Personnel Administrator.

If a grade of less than a "C" is received, or a "fail" received, the employee shall be responsible to repay the City for tuition, books and fees associated with the class. However, under certain circumstances, this requirement may be waived by the City Manager.

If the employee terminates employment and has not completed the class, the employee shall be responsible to repay the City for tuition, books, and fees associated with the class.

#### Police Academy.

All entry level patrolmen not certified by the State of New Mexico shall attend and complete the required police training at an approved New Mexico Police Academy within their first year of employment with the City.

Certification is a state requirement; failure to complete the program constitutes termination of employment with the City.

#### Safety Training

City employees will be required to take a certain amount of Safety Training classes to fulfill the hour requirements established by the Self Insurer's Fund. This requirement establishes the

minimum requirement for all employees. Individual department safety training requirements may exceed the minimum hours and employees should communicate with their supervisor/department head to understand the specific requirements of the employee's position.

#### Sexual Harassment Training (Mandatory)

City employees will be required to take a sexual harassment training course every two (2) years.

#### **Travel**

See Travel Policy.

#### **Unemployment Compensation**

The City of Aztec conforms to the State of New Mexico statutes concerning unemployment compensation.

#### **Uniforms**

The City shall provide uniforms for employees as budgeted funds are available and as required in Departmental Policies. Refer to [Section 4.20. Uniform Compensation](#) and [Section 16 Uniform Policy](#).

#### **Whistle Blowing**

The City shall protect employees who report in good faith what they reasonably believe to be a violation of state or federal law or conditions or practices that would put the health or safety of employees at risk. Employees shall first report the alleged violation, condition or practice to a person with supervisory authority over the employee and give the City time to remedy the situation. No employee shall be discharged, threatened, or discriminated against in any manner for reporting what he/she perceives to be wrongdoing. Insofar as possible, the confidentiality of the whistleblower shall be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense.

These are the activities in which employees have a right to participate without being subject to disciplinary action or harassment:

Filing discrimination charges with the EEOC or a state human rights agency.

Filing unfair labor practice charges with the National Labor Relations Board or state agency.

Filing a worker's compensation claim.

Filing a complaint with OSHA about safety hazards or refusing an assignment because of fear that it might be dangerous.

Engaging in lawful union activities.

Claiming an equal pay or wage/hour law violation.

Opposing or publicizing policies that violate laws, such as EPA, antitrust protection or fraudulent tax returns.

Reporting fraud, corruption, or other forms of lawbreaking covered by the Racketeering and Corruption Organization Act (RICO, the Whistleblowing Protection Act of 1989 or by state whistleblower statutes).

The right of a whistleblower to have protection from retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

**Workers Compensation**

Refer to [Section 4.17 Workers' Compensation](#).

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**SECTION 11. DEPARTMENT POLICIES****NO CHANGES****11.1 Department Policies**

When a City Department has adopted written policies and procedures, these shall apply in conjunction with the Personnel Policy and any other policies established by the City. If there is a conflict between policies, the more stringent policy will be followed. A signed acknowledgement shall be obtained when Departmental Policies are distributed to employees in that department. The acknowledgment shall be sent to the Personnel Administrator for inclusion in the employee's personnel file.

**SECTION 12. CITY VEHICLE POLICY****CHANGES: 12.1****12.1 City Vehicle Use**

Certain employees are required to use City-owned vehicles to carry out their duties. Any employee who operates a City vehicle must follow these rules:

1. Employee must possess a valid operator's license for the class of vehicle being driven.
2. Employee using the vehicle must be conducting City business.
3. Employee must receive prior approval from Supervisor and City Manager before driving vehicle for personal use.
4. Employee is responsible for checking the vehicle at the beginning of each workday to assure that the vehicle is in good mechanical condition and properly equipped.
5. The driver of the City vehicle is responsible for the condition of the vehicle.
6. Employee(s) must wear seat belt(s) at all times while vehicle is in motion. The driver shall instruct any passenger to fasten seat belt before vehicle is in motion.
7. Employee must operate the vehicle in a safe manner conforming to traffic laws and road conditions.
8. Smoking is prohibited in all City vehicles.
9. Employee shall not leave keys in vehicles for any reason.
10. Flammables such as gasoline must be stored in approved containers for transportation.
11. All accidents must be reported immediately.
12. Any employee who has an automobile accident caused by the employee must submit to a drug screen within two (2) hours of accident. In the event the employee is injured and medical attention is required, the drug screen shall be administered at the hospital or urgent care.
13. Minimum age to drive a City vehicle is 18 years old and must have a valid driver's license with no restrictions and an acceptable motor vehicle record.
14. City liability insurance requires that ALL city employees attend defensive driving every two (2) years provided by the city OR the employee may provide evidence of attendance through other equivalent and approved course.

Any violation of the rules listed above may result in disciplinary action up to and including termination.

**12.2 Personal Use of Automobiles**

1. Use of City vehicles for personal travel is not permitted unless the employee has the approval of Supervisor and City Manager.
2. Personal use of City vehicles is limited to commuting to and from the employee's workplace. The value of the commute will be \$1.50 per one-way trip \$3.00 round-trip. If more than one employee commutes in the same vehicle, the \$1.50 is applied to each employee. Any changes to the value of the commute, per IRS code, will be applied. Police are exempt per IRS code.
3. Employees who drive City vehicles to commute must complete the time sheets indicating the number of days that they are using the automobile.
4. Only employees who are on call, or generally called out, are authorized to take home City vehicles. The employee must live within twenty (20) miles of the city limits.

**SECTION 13. DRESS CODE POLICY****NO CHANGES****13.1 Policy**

A neat professional appearance is a requirement. It is expected that all employees will exercise good judgment and dress appropriately for their jobs. The following are factors to take into consideration when determining appropriate dress:

1. The nature of the employee's work.
2. Safety considerations, such as necessary precautions when working near machinery or hazardous work areas. Employees will be required to wear proper safety equipment at all times, without exception for any reason.
3. The nature of public contact, if any, and the normal expectations of outside parties with whom the employee works.
4. The prevailing dress practices of other workers in similar jobs.
5. Relaxed attire may be worn on the last day of the work week as long as it meets the approval by the appropriate supervisor or department approved policy.

**13.2 Disciplinary Action**

When an employee's dress does not comply with established standards, the Supervisor will discuss the matter with the employee. The Supervisor may initiate disciplinary action if dress attire continues to not comply with standards set.

## SECTION 14. DRUG AND ALCOHOL POLICY

**CHANGES: 14.5, 14.10**

### 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.

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."

Personnel Administrator

The Personnel Administrator or designee.

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. **The supervisor in turn must notify the HR department.** 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, 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 Personnel Administrator 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.

**SECTION 15. SMOKING AND ELECTRONIC CIGARETTE POLICY****NO CHANGES****15.1 Definitions**Electronic cigarette

An electronic device that delivers vapor for inhalation. Electronic cigarette shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.

**15.2 Public Buildings**

Smoking, including electronic cigarettes, is not permitted in any municipal buildings as well as within 50 feet of entrances to those places ([NMSA 1978, § 24-16; Dee Johnson Clean Indoor Air Act](#)).

**15.3 City Vehicles**

Smoking, including electronic cigarettes, is prohibited in all City vehicles (see also Section 12.1.8).

**SECTION 16. UNIFORM POLICY****NO CHANGES****16.1 In General**

1. All field employees are required to wear a uniform, provided that the department has adequate funding available in their fiscal year budget. Uniforms will be provided for each field employee, department head, supervisor, and/or employees that perform field work or are exposed to the elements.
2. Uniforms issued to an employee shall become the responsibility of that employee for cleaning and maintenance. Loss or destruction of uniforms or equipment that is not a result of employee negligence may be replaced by the Department. Negligence or carelessness could result in disciplinary action and/or replacement through an employee's paycheck.
3. Each employee is required to wear the uniform during normal scheduled work hours or shifts. An employee refusing to wear the City provided apparel during work hours or wears torn, soiled uniforms may be subject to disciplinary action.
4. The Department Head at their sole discretion may approve replacement of any uniform that is damaged or ruined during work activities exceeding the expense limits or quantities established in the Administrative Regulation.
5. Employees attending training session, or schools out of uniform are encouraged to dress appropriately and in good style. Employees that are provided "polos" or other nice cloths will be required to wear them as part of the City uniform when attending training unless travel requires formal dress like court. Apparel that is not allowed is as follows:
  - 1) Non-departmental approved tank tops or t-shirts;
  - 2) Shorts above the knees;
  - 3) Sweat pants;
  - 4) Denim type pants that are worn at the knees, pockets, or seat area or with "fashion tears";
  - 5) Flip-flops.
6. Specific color and design with the City and/or Department logo will be specified by department head as the need arises.

**16.2 Personal Protective Equipment (PPE)**

1. This section has been developed in accordance with 29 CFR 1910-132 Occupational Safety and Health Administration (OSHA)., American National Standards Institute (ANSI), Manual on Uniform Traffic Control Devices (MUTCD), and APPA (American Public Power Association) safety manual. Additional information and requirements concerning the selection and use of PPE can be found by referring to these standards.
2. Additional PPE that may be required can be authorized by the department head.

3. Recognizing the importance of employee safety, the department will provide all PPE for employees to carry out their job duties in a safe manner.
4. Certain apparel falling under the category of Personal Protective Equipment (PPE) shall conform to this uniform policy.

### 16.3 Uniform Compensation

The City shall provide uniforms for employees as budgeted funds are available and as required in each Departmental Policies. Compensation for Uniforms is established in [Section 4.20](#) with fiscal compensations established in an Administrative Regulation.

(AR-2003-03; Incorporated into Personnel Policy 2012)

### 16.4 Definitions

#### Annually

The fiscal year from July to June.

#### General Attire

Is considered any combination of hats, shirts, jackets, or vests that is used for purpose of identification as a City Employee. General attire is taxable under Federal Tax code.

#### General Uniform

Uniform attire as dictated by Departmental Policy which may include boots, jackets, overalls, pants, and shirts. General uniform is taxable under Federal Tax code.

#### Personal Protective Equipment

Equipment for the purpose of employee safety. Such equipment includes boots which have steel toes or other specialty rating, clothing which has a fire retardant rating (jackets, overalls, pants, shirts), prescription safety glasses. Personal Protective Equipment is NOT taxable under Federal Tax code.

### 16.5 Animal Shelter

1. Uniform Style. Will consist of jeans and tan button down shirts with City logo. In the winter it is appropriate to wear a long sleeve shirt under your uniform shirt. Officers will wear badges above pocket on left side.
2. Footwear. Ankle high boots should be worn at all times except when cleaning kennels and then rubber boots can be worn.
3. Equipment. All equipment remains the property of the Aztec Animal Shelter and must be returned to the Director if employment ends with this department. Equipment issued may include but is not limited to:
  - Animal Shelter badge
  - Back brace
  - Bite stick with holster
  - Flashlight with holster
  - Gloves
  - Pepper spray with holster
  - Leash with pouch

4. Exceptions. No official uniform is required for the Support Service Secretary and Rescue Coordinator. However, they are required to dress nicely and casually. Comfortable shoes would be appropriate as you might be walking quite a bit.

### 16.6 Community Development Office

The Community Development Office interacts with the public and is required to present itself in a “neat professional appearance” ([Section 13](#)).

1. Uniform Style. Office staff is required to wear a uniform shirt and khaki pants or business slacks (no denim). Short-style pants (i.e. Capris) and skirts are acceptable, provided they are not denim.
2. Footwear. Comfortable and/or dress shoes in good condition are required. The Code Compliance and Information Officer will be required to wear proper footwear for field work. Bare feet, stocking feet or flip-flops are prohibited.
3. Equipment. Nametags will be provided by the department and shall be worn by employees at all times.
4. Exceptions. The Community Development Director may elect to wear professional business attire in lieu of a uniform.
5. Special Attire Days.
  - 1) Special Events. The Community Development Director may allow exceptions to the uniform policy for special events such as Employee Cleanup Day. All exceptions to the uniform policy must be approved in advance by the Community Development Director.

### 16.7 Electric Department

1. Uniform Style. The Electric Department will have specific color and design with the City or Department logo on the left side chest area of the apparel and Electric Department spelled out on the right side chest area of the apparel.
2. Footwear. All field personnel are required to wear boots that are classified as PPE.
3. Equipment. All PPE items will be provided to the employee. It is the employee’s responsibility to ensure he/she has the appropriate PPE for each assigned task. If an employee is unsure of the type of PPE needed for a task, he/she should seek guidance from the Supervisor on the PPE needed for that task.
4. Exceptions. None.

### 16.8 General Services – Parks and Recreation

1. Uniform Style. The General Services Department will have specific color and design with the City or Department logo on the left side chest area of the apparel.

2. Footwear. All field personnel are required to wear boots that are classified as PPE.
3. Equipment. All PPE items will be provided to the employee. It is the employee's responsibility to ensure he/she has the appropriate PPE for each assigned task. If an employee is unsure of the type of PPE needed for a task, he/she should seek guidance from the Supervisor on the PPE needed for that task.
4. Exceptions. Shorts may be worn at the discretion of the Department Head depending on health and safety concerns of the Department. Shorts will be neat in appearance with hemmed legs, in a dress or semi-casual style one color with belt loops. No baggy, basketball, surfer or swim suit style shorts are allowed. Shorts will be no higher than the individual's hand width from the top of the knee or not fall below the top of the knee while the individual is in the standing position. If shorts are worn, employees will be required to carry long pants or bib overalls so that a clothing change can be made immediately if job requirements change.

### 16.9 Police Department

1. Uniform Style. Uniforms will be issued by department upon initial employment and conform to the specifications. Items not issued must be approved by the Chief of Police or Designee before being used.
  - 1) Uniform items will be replaced as needed.
  - 2) Leather gear and other equipment will be replaced as needed.
  - 3) The Department will provide jackets that can be worn by all employees in cooler weather.
2. Footwear. Employees will receive a yearly boot allowance.
3. Equipment.
  - 1) Each officer will be provided a bullet resistant vest which will be worn on all patrol duty assignments unless otherwise authorized by the Chief of Police or designee.
4. Officers Attending Training Session, Or Schools Out Of Uniform. Officers attending training session, or schools out of uniform are encouraged to dress appropriately and in good style.
5. Class "A" Uniform. The Class "A" Uniform will be worn for special or formal events as deemed appropriate. The Class "A" Uniform will consist of the following components:
  - 1) Long sleeve uniform shirt;
  - 2) Ascot and braid/ or tie;
  - 3) Department hat;
  - 4) All other standard uniform components.
6. Civilian Uniforms. Civilians will be issued uniform tops and Jackets as prescribed below:

- 1) If a civilian wears a uniform top everyday they will be supplied four (4) tops with their name and city logo on them four (4) pair of pants no more than twice per year. One jacket per year will be given with their name and city logo on it.
- 2) If civilians opt to wear a uniform only part-time they will be only given two (2) uniform tops with their name and city logo on them; two (2) pair of pants no more than twice per year. One jacket per year will be given them with their name and city logo on it.
- 3) Evidence Tech may be given special uniform to protect them.
- 4) Part- time employees will receive ½ of the above order and one jacket.
- 5) Casual Thursday allow for wearing of Levi type jeans by civilians.

### 16.10 Public Works

1. Uniform Style. The Public Works Department will have specific color and design with the City or Department logo on the left side chest area of the apparel and “Public Works Department” displayed on the right side chest area of the apparel.
2. Footwear. All field personnel are required to wear boots that are classified as PPE.
3. Equipment. All PPE items will be provided to the employee. It is the employee’s responsibility to ensure he/she has the appropriate PPE for each assigned task. If an employee is unsure of the type of PPE needed for a task, he/she should seek guidance from the Supervisor on the PPE needed for that task.
4. Exceptions. None.

### 16.11 Visitor Center

The Aztec Visitor Center inherently invites the general public through its door. We attract and meet a wide variety of people – from residents looking to pay utility bills, to stop-ins needing directions to a particular destination, to tourists hoping for the latest information about must-see sites like the Aztec Ruins. It is necessary to establish a professional, clean, comfortable and inviting environment for our guests as well as employees. Therefore is it imperative that we offer a consistently professional appearance that mimics and dovetails our efforts to provide the friendliest, most attentive, and most responsive customer service possible.

1. Uniform Style. The style of attire at the Visitor Center will range from “tourist casual” to “business casual,” plus include a weekly “denim pants day” that may expand to special days (at the discretion of the Tourism and Marketing Supervisor). Weather will dictate the style most days; however there will be special events or meetings when the Tourism and Marketing Supervisor will dictate the dress code, based on the style of event/meeting.
2. Footwear. Comfortable and/or dress shoes in good condition are required.
3. Equipment. Nametags will be provided by the department and shall be worn by employees at all times.

4. Exceptions. The Tourism-Marketing Supervisor may elect to wear professional business attire in lieu of a uniform.
5. Special Attire Days.
  1. Tourist Casual is reserved for when the weather becomes hot (72-degrees and warmer); attire can be relaxed and comfortable, including short-style pants (no denim) and short-sleeved uniform shirts.
  2. Business Casual is dressier and more appropriate for cooler weather and includes full-length pants (no denim) and long-sleeved uniform shirts.

## SECTION 17. SOCIAL MEDIA POLICY

### NO CHANGES

#### 17.1 Purpose

This policy establishes guidelines for the establishment and use by the City of Aztec of third party social media sites (including but not limited to Facebook and Twitter) as a means of conveying City of Aztec ("City") information to its public. The intended purpose behind establishing City of Aztec use of social media sites is to disseminate information from the City, about the City, to its public. The City of Aztec has an overriding interest and expectation in deciding what is "spoken" on behalf of the City on third party social media sites.

#### 17.2 Definitions

For purposes of this policy, the following terms have been defined:

##### Comments

Includes all information in the form of text, pictures, videos or any other form of communicative content posted on a City of Aztec social media site.

##### Poster

Any person posting information onto a social media site.

##### Social Media

Content created by individuals, using accessible, expandable, and upgradable publishing technologies, through and on the Internet. Examples of social media include but are not limited to Facebook, blogs, MySpace, RSS, YouTube, Second Life, Twitter, LinkedIn, Delicious, and Flickr.

#### 17.3 In General

1. The establishment and use by any City department of City social media sites are subject to approval by the City Manager or his/her designees. All City of Aztec social media sites shall be administered by City of Aztec Information Technology (IT) or designated staff person.
2. City social media sites should make clear that they are maintained by the City of Aztec and that they follow the City's Social Media Policy.
3. Wherever possible, City social media sites should link back to the official City of Aztec website for forms, documents, online services and other information necessary to conduct business with the City of Aztec.
4. The city moderators will monitor content on City social media sites to ensure adherence to both the City's Social Media Policy and the interest and goals of the City of Aztec.
5. The City reserves the right to restrict or remove any content that is deemed in violation of this Social Media Policy or any applicable law. Any content removed based on these guidelines must be retained by the moderators for a reasonable period of time, including the time, date and identity of the person posting the information, when available.

6. These guidelines must be displayed to users or made available by hyperlink.
7. The City will approach the use of social media tools as consistently as possible, enterprise wide.
8. The City of Aztec's website at <http://www.aztecm.gov> is the City's primary and predominant internet presence.
9. All City use of social media sites shall adhere to applicable federal, state and local laws, regulations and policies.
10. City social media sites are subject to the New Mexico Public Records Act. Any content maintained in a social media format that is related to City business, including a list of subscribers, posted communication, and communication submitted for posting, may be a public record subject to public disclosure.
11. Comments on topics or issues not within the jurisdictional purview of the City of Aztec may be removed.
12. Employees representing the City government via City social media sites must conduct themselves at all times as a representative of the City and in accordance with all City policies.
13. Designated social media moderators are required to submit username and passwords to the City IT department when establishing new accounts or when change in password has occurred.

#### **17.4 Public Comments**

1. As a public entity the City must abide by certain standards to serve all its constituents in a civil and unbiased manner.
2. The intended purpose behind establishing City of Aztec social media sites is to disseminate information from the City, about the City, to its public.
3. Comments containing any of the following inappropriate forms of content shall not be permitted on City of Aztec social media sites and are subject to removal and/or restriction by the city moderators.
  - 1) Comments not related to the original topic, including random or unintelligible comments;
  - 2) Profane, obscene, violent, or pornographic content and/or language;
  - 3) Content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, or national origin;
  - 4) Defamatory or personal attacks;
  - 5) Threats to any person or organization;
  - 6) Comments in support of, or in opposition to, any political campaigns or ballot measures;
  - 7) Solicitation of commerce, including but not limited to advertising of any business or product for sale;

- 8) Conduct in violation of any federal, state or local law;
  - 9) Encouragement of illegal activity;
  - 10) Information that may tend to compromise the safety or security of the public or public systems; or
  - 11) Content that violates a legal ownership interest, such as a copyright, of any party.
4. A comment posted by a member of the public on any City of Aztec social media site is the opinion of the commentator or poster only, and publication of a comment does not imply endorsement of, or agreement by, the City of Aztec, nor do such comments necessarily reflect the opinions or policies of the City of Aztec.
  5. Content posted to a City-owned and maintained social media becomes thereafter free-usage property of the City. This includes all original wording, all posted images that come by way of a Smartphone, etc. However, photography or wording that has any prior and/or documented copyright or ownership will be removed.
  6. The City of Aztec reserves the right to deny access to third party social media sites for any employee on their city workstation, who post comments inappropriate content as set forth in Subsection 3 above, at any time and without prior notice.
  7. Departments posting shall monitor their social media sites for comments requesting responses from the City and for comments in violation of this policy.
  8. When a City of Aztec employee responds to a comment, in his/her capacity as a City of Aztec employee, the employee's name and title should be made available, and the employee shall not share personal information about himself or herself, or other City employees.
  9. All comments posted to any of City of Aztec third party social media sites are bound by the third party social media's Statement of Rights and Responsibilities, i.e., <http://www.facebook.com/terms.php>, and City of Aztec reserves the right to report any violation of any of the City of Aztec used social media sites(s) Statement of Rights and Responsibilities to take appropriate and reasonable responsive action.

(AR-2012-31; Incorporated into Personnel Policy 2012)

## SECTION 18. MOTOR VEHICLE POLICY

### NO CHANGES

#### 18.1 Driver's License Required

Employees are required to carry a valid driver's license with them while at work. Failure to carry a valid driver's license can be grounds for disciplinary action as specified in [Section 6. Disciplinary Action and Terminations](#).

#### 18.2 Motor Vehicle Records

1. All employees, public officials, and volunteers who operate a city vehicle and/or mobile equipment or use their own vehicle for city business are required to hold a valid driver's license. An employee who does not maintain a valid driver's license is subject to [Section 6. Disciplinary Action and Terminations](#).
2. Motor vehicle records (MVR) will be reviewed on a monthly basis by the Personnel Administrator. In addition to reviewing MVR for a current driver's license, the following items will also be reviewed:
  - 1) The driver's license class is correct for the type of vehicle and/or mobile equipment operated. Persons operating equipment falling under the Department of Transportation for Commercial Licensing shall obtain and maintain a Commercial Driver's License. Individuals who operate a city fire vehicle shall hold a valid Class E license.
  - 2) Number of points accumulated on the license in a twelve (12) month period. In accordance with NM Self Insurer's Fund Policy, employees who accumulate six (6) points on their license in a twelve (12) month period will be notified and any additional points will result in the employee becoming uninsurable on city vehicles/mobile equipment for the remainder of the twelve month period. Such violations are subject to [Section 6. Disciplinary Action and Terminations](#).
  - 3) DWI/DUI Offense, which is subject to [Section 6. Disciplinary Action and Terminations](#).
3. Any changes in an employee's driver license (e.g., state, class, **revocations**, or restrictions) are to be reported to the Personnel Administrator as per [Section 10 Definitions](#): Change of Employee Information

**A G E N D A**  
**CITY OF AZTEC**  
**CITY COMMISSION MEETING**  
**October 10, 2017**  
**201 W. Chaco, City Hall**  
**6:00 p.m.**

**I. CALL TO ORDER**

**II. INVOCATION**

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. AGENDA APPROVAL**

**VI. CITIZEN RECOGNITION**

**VII. EMPLOYEE RECOGNITION**

**VIII. CONSENT AGENDA**

- A. Commission Special Meeting Minutes, September 22, 2017
- B. Commission Workshop Minutes, September 26, 2017
- C. Commission Meeting Minutes, September 26, 2017
- D. Commission Special Workshop Minutes, September 28, 2017
- E. City of Aztec/Department of Energy (Western Area Power) Contract #17-SLC-0800
- F. Resolution 2017-1063 Surplus
- G. Sunday Alcohol Sales

*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"*

**IX. ITEMS FROM CONSENT AGENDA**

**X. 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)*

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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 72 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410.

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

**XII. DEPARTMENT REPORTS**

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

**XIII. CLOSED SESSION**

Closed Session: Pursuant to State Law, Section 10-15-1H (2) Limited Personnel Matters City Manager

**XIV. BUSINESS ITEMS**

A. City Manager Personnel Actions

**XV. ADJOURNMENT**

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

**Note:** A final agenda will be posted 72 hours prior to the meeting. Copies of the agenda may be obtained from City Hall, 201 W. Chaco, Aztec, NM 87410.

1 CITY OF AZTEC  
2 **SPECIAL** COMMISSION MEETING MINUTES  
3 September 22, 2017  
4

5 **I. CALL TO ORDER**

6 Mayor Burbridge called the Meeting to order at 5:15 pm at the Aztec City  
7 Commission Room, City Hall, 201 W. Chaco, Aztec, NM.  
8

9 **II. INVOCATION**

10 The Invocation was lead by Commissioner Austin Randall  
11  
12

13 **III. PLEDGE OF ALLEGIANCE**

14 The Pledge of Allegiance was lead by Electric Director Ken George  
15  
16

17 **IV. ROLL CALL**

18  
19 Members Present: Mayor Sally Burbridge; Mayor Pro-Tem Sipe;  
20 Commissioner Katee McClure; Commissioner Austin  
21 Randall; Commissioner Sheri Rogers;  
22

23 Members Absent: None  
24

25 Others Present: Karla Sayler, City Clerk  
26  
27

28 **V. CLOSED SESSION: Pursuant to State Law, Section 10-15-1H (2) Limited  
29 Personnel Matters**  
30

31 Commission all voted aye and went into closed session pursuant to state law,  
32 section 10-15-1H (2) limited personnel matters at 5:19 pm.

33 Commission came out of closed session at 6:35 pm with all voting aye and  
34 stating no other items were discussed but limited personnel matters per state law  
35 section 10-15-1H(2)  
36  
37  
38

39 **VI. AGENDA APPROVAL**

40  
41 **MOVED** by Mayor Burbridge, **SECONDED** by Mayor Pro-Tem Sip to Approve the  
42 Agenda with the exception of Business Item A, City Manager Interim Recruitment  
43 Process  
44

45 All Voted Aye; Motion Passed Five to Zero  
46

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**VII. BUSINESS ITEMS**

B. Amendment to City Manager Contract

MOVED by Commissioner Randall, SECONDED by Mayor Pro-Tem Sipe to Approve City Manager Contract Amendment With Sick Leave Payout Of 2/3 Of The Total Number Of Hours Available

All Voted Nay: Motion Denied 5-0

**VIII. ADJOURNMENT**

Moved by Mayor Burbridge, SECONDED by Commissioner Mayor Pro-Tem Sipe to adjourn the meeting at 6:37 p.m.

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

ATTEST:

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

MINUTES PREPARED BY:

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

1 CITY OF AZTEC  
2 COMMISSION MEETING MINUTES  
3 September 26, 2017  
4

5 **I. CALL TO ORDER**

6 Mayor Pro-Tem Sipe called the Meeting to order at 6:03 pm at the Aztec City  
7 Commission Room, City Hall, 201 W. Chaco, Aztec, NM.  
8

9 **II. INVOCATION**

10  
11 The Invocation was led by Judge Carlton Gray  
12

13 **III. PLEDGE OF ALLEGIANCE**

14  
15 The Pledge of Allegiance was led by David Williams  
16

17 **IV. ROLL CALL**

18  
19 Members Present: Mayor Sally Burbridge; Mayor Pro-Tem Sipe;  
20 Commissioner Austin Randall; Commissioner Katee  
21 McClure; Commissioner Sheri Rogers  
22

23  
24 Members Absent: None  
25

26 Others Present: City Manager Joshua Ray; City Attorney Larry  
27 Thrower; City Clerk Karla Sayler; Project Manager Ed  
28 Kotyk (see attendance sheet)  
29

30 **V. AGENDA APPROVAL**

31  
32 MOVED by Commissioner Randall, SECONDED by Mayor Pro-Tem Sipe to  
33 Approve the Agenda as Presented  
34

35 All Voted Aye; Motion Passed Five to Zero  
36

37 **VI. CITIZEN RECOGNITION**

38  
39 None  
40

41 **VII. EMPLOYEE RECOGNITION**

42  
43 Mayor Pro-Tem Sipe recognized Josh and Tristin Olguin from General Service  
44 for helping with the facilities at Hartman Park on their off time for going above and  
45 beyond and Russ Burbridge and Yvonne Multine for helping a neighbor. Commissioner

46 Rogers visited City departments and mentioned that they are all very nice and well  
47 maintained.

48

49 **VIII. PROCLAMATION**

50

51 Manufactures Week

52

53 Mayor Burbridge read the proclamation for National Manufacturing Day  
54 October 6, 2017.

55

56 **IX. CONSENT AGENDA**

57

58 MOVED by Commissioner Randall, SECONDED by Commissioner McClure to  
59 Approve the Consent Agenda with the exception of Items F, H, and I

60

61 A. Commission Meeting Minutes, September 12, 2017

62 B. Finance Department Records Destruction

63 C. Red Apple Transit Agreement

64 D. Contract for Library Services

65 E. Agreement for Senior Citizen Services

66 F. Bid 2017-606 Western Dr. Reconstruction Paving Phase Change Order #1

67 (PULLED)

68 G. Resolution 2017-1062 Surplus

69 H. FastTrack Communications Inc Franchise Agreement (PULLED)

70 I. FastTrack Joint Use Pole Attachment License Agreement (PULLED)

71

72

73 All Voted Aye: Motion Passed Five to Zero

74

75

76 **X. ITEMS FROM CONSENT AGENDA**

77

78 F. Bid 2017-606 Western Dr. Reconstruction Paving Phase Change Order #1

79

80 Mayor Pro-Tem Sipe questioned why it is going to cost \$13,293.80 to get rid of a  
81 hump on the construction that was the result of the sewer project. Public Works  
82 Director mentioned that the hump needs to be moved to the west so the lower portion of  
83 the roadway coincides with the irrigation lateral that runs perpendicular with the  
84 roadway which was a part of the design. The design engineer that we hired thought that  
85 the hump was going to be included as part of the sewer outfall project which was given  
86 to the contractor of the project and the hump was removed and then installed back by  
87 the contractor and it wasn't supposed to be so now the change order is to remove the  
88 hump again.

89            MOVED by Mayor Pro-Tem Sipe, SECONDED by Commissioner Randall to  
90 Approve Bid 2017-606 Western Dr. Reconstruction, Paving Phase, Change Order #1 in  
91 the amount of \$13, 293.80 plus tax.

92  
93            All Voted Aye; Motion Passed Five to Zero

94  
95            H. FastTrack Communications Inc. Franchise Agreement

96  
97            Commissioner Randall pulled item to review the fees associated with the  
98 franchise agreement and Joint Use Pole agreements.

99  
100           MOVED by Commissioner Randall, SECONDED by Commissioner Rogers to  
101 Approve Franchise Agreement between FastTrack Communications Inc. and the City of  
102 Aztec

103  
104           All Voted Aye; Motion Passed Five to Zero

105  
106           J. FastTrack Joint Use Pole Attachment License Agreement

107  
108           MOVED by Commissioner Randall, SECONDED by Mayor Pro-Tem Sipe to  
109 Approve Pole Attachment Agreement with FastTrack Communications Inc.

110  
111           All Voted Aye; Motion Passed Five to Zero

112  
113           **XI.    CITIZENS INPUT**

114  
115           None

116  
117           **XII.   BUSINESS ITEMS**

118  
119           A. Intent to Adopt Ordinance 2017-466 Amending Chapter 17, Section 17-1  
120 Personnel Policy

121  
122           Mayor Burbridge request to postpone this item to the next commission meeting  
123 on October 10, 2017 for further review.

124           MOVED by Mayor Burbridge, SECONDED by Commissioner McClure to  
125 Postpone Intent to Adopt Ordinance 2017-466, Amending Chapter 17, Section 17-  
126 1 Personnel Policy to Next Commission Meeting on October 10, 2017

127  
128           A Roll Call Was Taken: All Voted Aye; Motion Passed Five to Zero

129  
130  
131

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

133  
134 Mayor Burbridge attended the IEDC Annual Conference in Toronto Canada and  
135 received an Award for Excellence in Economic Development for the HUB project. She  
136 mentioned that we were the only New Mexico community to be recognized.

137  
138 Mayor Pro-Tem Sipe mentioned that it is Homecoming Week in Aztec and that  
139 she will attend an MPO meeting Thursday.

140  
141 Commissioner Rogers mentioned that she attended a San Juan Safe  
142 Communities meeting.

143  
144 Commissioner McClure mentioned that she attended the Planning Town Hall  
145 meeting hosted by Community Development Department. She gave a big thank you to  
146 Steven for hosting the meeting and said she felt it was very well informed. She attended  
147 a Library Board meeting and will be attending an ECHO board meeting next month.

148  
149 Larry mentioned that it was his 12 year anniversary with the City of Aztec as City  
150 Attorney.

151  
152  
153 **XIV. DEPARTMENT REPORTS**

154  
155 None

156  
157 **XV. ADJOURMENT**

158  
159 Moved by Mayor Burbridge, SECONDED by Mayor Pro-Tem Sipe to adjourn the  
160 meeting at 6:56 p.m.

161  
162  
163 \_\_\_\_\_  
164 Mayor, Sally Burbridge

165  
166 ATTEST:  
167 \_\_\_\_\_  
168 Karla Saylor, City Clerk

169  
170 MINUTES PREPARED BY  
171  
172 \_\_\_\_\_  
173 Karla Saylor, City Clerk

1 CITY OF AZTEC  
2 WORKSHOP MEETING MINUTES  
3 September 26, 2017  
4

5 **I. CALL TO ORDER**

6 Mayor Burbridge called the Workshop to order at 5:15 pm at the Aztec  
7 City Commission Room, City Hall, 201 W. Chaco, Aztec, NM.  
8

9 MEMBERS PRESENT: Mayor Sally Burbridge; Mayor Pro-Tem Sipe;  
10 Commissioner, Katee McClure; Commissioner  
11 Austin Randall  
12

13 MEMBERS ABSENT: None  
14

15 OTHERS PRESENT: City Attorney, Larry Thrower; City Manager  
16 Joshua Ray; Community Development Director  
17 Steven Saavedra; City Clerk, Karla Sayler  
18

19 **A. City Code-Nuisances**  
20

21 City Manager Josh Ray mentioned that this topic came up from some  
22 conversations with some business owners in the City to talk about the Nuisance Code  
23 to see what direction the commission want to have on the code. He mentioned that  
24 Community Development Director Steven Saavedra has pulled other codes from other  
25 municipalities to compare to ours. The discussion in the workshop was about items  
26 being stored outside of businesses and residential lots in the public views. Code states  
27 that items should be enclosed within a building or dwelling, or behind a privacy fence. It  
28 was mentioned that code has a conflict in what is business C-1 or C-2 zoning. It was  
29 mentioned that all outdoor storage should be surrounded by a wall or fence between 6-8  
30 feet in height. Staff is requesting for a direction on the code weather to leave it the way  
31 it is or to change it. Judge Gray mentioned that he feels that the problem with city code  
32 is that sometimes it is the burden of City to prove that somebody is in violation of the  
33 code and that right now the way it is written its almost making it impossible for the City  
34 to prove some of the owners are in violation because of the way it is worded. He feels  
35 that the verbiage needs to be cleaned up and make it where it is interpreted to be equal  
36 to all. He feels that now the way it is written it's not fair to the citizens or business  
37 owners because there is too much grey area in it.

38 There were business owners at the workshops who voiced their opinions to  
39 commission mentioning that it should be the same for all business owners and residents  
40 on what needs to be done. Some of them feel that they are being picked on and feel  
41 that the City is not enforcing code across the board.  
42

43 **II. ADJOURMENT**  
44

45  
46 MOVED by Mayor Burbridge to adjourn the meeting at 6:02 p.m.

1  
2  
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8  
9  
10  
11  
12  
13

ATTEST:

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

MINUTES PREPARED BY:

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

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

1 CITY OF AZTEC  
2 **SPECIAL** WORKSHOP MEETING MINUTES  
3 September 28, 2017  
4

5 **I. CALL TO ORDER**

6 Mayor Burbridge called the Workshop to order at 5:17 pm at the Aztec  
7 City Commission Room, City Hall, 201 W. Chaco, Aztec, NM.  
8

9 MEMBERS PRESENT: Mayor Sally Burbridge; Mayor Pro-Tem Sipe;  
10 Commissioner McClure; Commissioner Austin  
11 Randall; Commissioner Sheri Rogers  
12

13 MEMBERS ABSENT: None  
14

15 OTHERS PRESENT: Finance Director Kathy Lamb; City Clerk Karla  
16 Sayler  
17

18 **A. Request for Proposal Process for Interim City Manager Position**  
19

20 Mayor Burbridge opened the meeting mentioning that they will go over the  
21 process for request for proposal for an Interim City Manager. Mayor Burbridge  
22 mentioned that the City will go out for proposal to hire a firm to search for the interim.  
23 Kathy presented commission with a draft RFP which was reviewed and some changes  
24 were made to it. The proposal will be advertised on Sunday October 1, 2017 and the  
25 proposal opening date will be October 16, 2017. The Final date for questions will be  
26 Friday, October 6, 2017. If requests are submitted and approved they can possibly go  
27 on the first meeting in November for approval. The goal is to have an Interim on board  
28 by December. The Commission has decided that a new City Manager will not be  
29 appointed until after the election in March.  
30  
31

32 **II. ADJOURMENT**  
33

34 Moved by Mayor Burbridge to adjourn the meeting at 6:30 p.m.  
35  
36

37 \_\_\_\_\_  
38 Mayor, Sally Burbridge

39 ATTEST:  
40

41 \_\_\_\_\_  
42 Karla Sayler, City Clerk

43 MINUTES PREPARED BY:  
44

45 \_\_\_\_\_  
46 Karla Sayler, City Clerk

# Staff Summary Report

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**MEETING DATE:** October 10, 2017  
**AGENDA ITEM:** VIII. CONSENT AGENDA (E)  
**AGENDA TITLE:** City of Aztec/Department of Energy (Western Area Power)  
Contract #17-SLC-0880

---

**ACTION REQUESTED BY:** Ken George, Electric Director  
**ACTION REQUESTED:** Approval of Contract No. 17-SLC-0880, Post 2024 Firm  
Electric Service Contract  
**SUMMARY BY:** Ken George

---

## PROJECT DESCRIPTION / FACTS

The City of Aztec and the Department of Energy through Western Area Power (WAPA) have had a contract to supply power from the federal hydro systems along the Colorado river since 1987. This contract ( 87-SLC-0015) has had several amendments over the years. Our Current contract runs through 2024.

WAPA would like the City to enter into a new contract (17-SLC-0880) abolishing our old contract with new terms lasting until September 30, 2057. There are a few minor changes in the new contract. The terms of how much power we can receive from WAPA stay the same. WAPA have added a section on credit worthiness and a section covering intergraded resource planning. The City is in good standing on both of these additions.

---

**SUPPORT DOCUMENTS:** Cover Letter  
Contract 17-SLC-0880

---

**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Contract Number 17-SLC-0880 between the City of Aztec and the United States Department of Energy, Western Area Power Administration.

---



**Department of Energy**  
 Western Area Power Administration  
 150 East Social Hall Avenue, Suite 300  
 Salt Lake City, UT 84111-1580

SEP 27 2017

Mr. Ken George  
 Electric Director  
 City of Aztec  
 201 West Chaco Street  
 Aztec, NM 87410

Dear Mr. George:

Enclosed are two executable originals of Salt Lake City Area Integrated Projects (SLCA/IP) Firm Electric Service Contract No. 17-SLC-0880 between the City of Aztec and Western Area Power Administration (WAPA) for Firm Electric Service. As noted in the Final 2025 Marketing Plan, published November 29, 2016 (81 FR 85946), WAPA will provide existing Contract Rate of Delivery commitments with associated energy to current SLCA/IP FES customers as set forth in the existing SLCA/IP contracts, which implemented the Post-1989 General Power Marketing Criteria and Post-2004 PMI.

Your existing SLCA/IP Contract No. 87-SLC-0015 will terminate September 30, 2024. Contract No. 17-SLC-0880 will be effective on October 1, 2017 or the date of signature by WAPA, whichever is later, and will remain in effect through September 30, 2057. Delivery of Firm Electric Service under Contract No. 17-SLC-0880 will begin October 1, 2024, and will remain in effect through September 30, 2057. Please sign, date, and return the two executable originals to the address below. Please note the Colorado River Storage Project (CRSP) Management Center will move to a new office location this fall and if the signed contract is returned after October 31, 2017, it should be mailed to the CRSP Management Center's new address as noted below.

	<b>Returning before 10/31/2017</b>	<b>Returning After 10/31/2017</b>
<b>Send to:</b>	Department of Energy Western Area Power Administration 150 East Social Hall Avenue Suite 300 Salt Lake City, UT 84111-1580	Department of Energy Western Area Power Administration 299 S. Main St. Suite 200 Salt Lake City, UT 84111

Upon receipt WAPA will execute both originals, and return one fully executed original for your records. If there are any questions, please telephone Steven Mullen at (801) 524-6383.

Sincerely,

Brent C. Osiek  
 Vice President of Power Marketing  
 CRSP Management Center

CONTRACT

BETWEEN

CITY OF AZTEC

AND

UNITED STATES

DEPARTMENT OF ENERGY

WESTERN AREA POWER ADMINISTRATION

SALT LAKE CITY AREA INTEGRATED PROJECTS

FOR

FIRM ELECTRIC SERVICE

CONTRACT  
 BETWEEN  
 CITY OF AZTEC  
 AND  
 UNITED STATES  
 DEPARTMENT OF ENERGY  
 WESTERN AREA POWER ADMINISTRATION  
 SALT LAKE CITY AREA INTEGRATED PROJECTS  
 FOR  
 FIRM ELECTRIC SERVICE

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CONTRACT  
BETWEEN  
CITY OF AZTEC  
AND  
UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
SALT LAKE CITY AREA INTEGRATED PROJECTS  
FOR  
FIRM ELECTRIC SERVICE

1. PREAMBLE

This CONTRACT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved February 25, 1905 (33 Stat. 814), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), the Flood Control Act of December 22, 1944 (58 Stat. 887), the Act of Congress approved July 3, 1952 (66 Stat. 325), the Act of Congress approved April 11, 1956 (70 Stat. 105), the Act of Congress approved August 4, 1977 (91 Stat. 565), and acts amendatory or supplementary to the foregoing Acts, between THE UNITED STATES OF AMERICA, acting by and through the Administrator, Western Area Power Administration, an agency of the Department of Energy, hereinafter called "WAPA," represented by the officer executing this Contract, a duly appointed successor, or a duly authorized representative, hereinafter called the "Contracting Officer," and City of Aztec, duly organized, created, and existing under and by virtue of the laws of the State of New Mexico hereinafter referred to as the "Contractor," its successors and assigns, each

sometimes hereinafter individually called "Party," and both sometimes hereinafter collectively called the "Parties."

2. EXPLANATORY RECITALS

2.1 The United States Bureau of Reclamation (Reclamation) operates certain Federal hydroelectric facilities known as the Collbran Project, Rio Grande Project, and the Colorado River Storage Project.

2.2 WAPA refers to the hydroelectric facilities of the Collbran Project, Rio Grande Project, and the Colorado River Storage Project collectively as the Salt Lake City Area Integrated Projects, hereinafter called "SLCA Integrated Projects."

2.3 WAPA markets and transmits hydroelectric power generated at the SLCA Integrated Projects pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved February 25, 1905 (33 Stat. 814), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), the Flood Control Act of December 22, 1944 (58 Stat. 887), the Act of Congress approved July 3, 1952 (66 Stat. 325), the Act of Congress approved April 11, 1956 (70 Stat. 105), the Act of Congress approved August 4, 1977 (91 Stat. 565), and acts amendatory or supplementary to the foregoing Acts by the United States of America.

- 2.4 To implement the foregoing authorities, WAPA developed and published the Salt Lake City Area Integrated Projects Post-1989 General Power Marketing and Allocation Criteria (hereinafter called the “Criteria” and/or “Post-1989 Marketing Plan”) in the Federal Register on February 7, 1986 (51 FR 4844).
- 2.5 WAPA and Reclamation are under a continuing obligation to ensure the operation of Reclamation’s hydroelectric facilities complies with Federal law. Due to this, WAPA maintains flexibility in its contracts to respond if Reclamation changes the way its facilities are operated.
- 2.6 As published in the Federal Register on April 2, 1987 (52 FR 10620), WAPA’s Administrator approved final allocations of the hydroelectric power generated at the SLCA Integrated Projects, under which the Contractor received Summer and Winter Season capacity and energy allocations. Minor revisions were subsequently made to the allocations on August 24, 1989 (54 FR 35234).
- 2.7 WAPA entered into long-term firm power contracts for the delivery of the SLCA Integrated Projects capacity and energy allocations listed in the April 2, 1987, Federal Register notice (52 FR 10620), as subsequently revised in the August 24, 1989, Federal Register notice (54 FR 35234) and other Federal Register notices explained below. These contracts are referred to as the Firm Electric Service contracts executed with the SLCA Integrated Projects.

- 2.8 Effective November 20, 1995, WAPA published the Energy Planning and Management Program (Program), 10 C.F.R. Part 905, to implement Section 114 of the Energy Policy Act of 1992 (106 Stat. 2776).
- 2.9 The Program consists of two components: a requirement that each long-term firm power customer prepare an integrated resource plan, and a Power Marketing Initiative (PMI) under which WAPA extended a major portion of the Federal resource commitments to its existing long-term firm power customers. Subpart C - Power Marketing Initiative of the Program provides for the establishment of project-specific resource pools and the allocation of power from these pools to new preference customers.
- 2.10 WAPA did not consider applying the PMI to the SLCA Integrated Projects until after completion of the SLCA Integrated Projects Electric Power Marketing Environmental Impact Statement (EIS). The Record of Decision on that EIS was issued on November 1, 1996.
- 2.11 Subsequent to WAPA's proposed application of the PMI to the SLCA Integrated Projects, the public was provided opportunities to comment on WAPA's proposed application of the PMI. Public comment was also invited on how WAPA should market power given recent changes in the electric industry; and, on how much power should be set aside for new customers, particularly Native American Tribal entities. On June 25, 1999, WAPA announced its decision in the Federal Register

(64 FR 34414) that the term of SLCA Integrated Projects contracts would be renewed and extended until September 30, 2024. On September 8, 1999, WAPA established the Power Allocation Procedures and Call for Applications in the Federal Register (64 FR 48825), for SLCA Integrated Projects Post-2004 Resource Pool.

- 2.12 On February 4, 2002, WAPA published final allocations of the Post-2004 Resource Pool in the Federal Register (67 FR 5113) and on July 29, 2002, adjusted final allocations as published in the Federal Register (67 FR 49019).
  
- 2.13 In the May 20, 2004, Federal Register (69 FR 29135), WAPA published its Notice of Determination of the Post-2004 Marketable Resources which stated that due to drought conditions it was necessary to reduce the energy component of the SLCA Integrated Projects marketable resources. WAPA stated that it would reduce the marketable energy available to its Contractors beginning October 1, 2004, then gradually increase the energy available over a 5-year period, reaching a level in the fifth year (beginning October 1, 2009) that would remain constant through September 30, 2024. WAPA also indicated that additional hydroelectric power could be available to its customers when hydrologic conditions warranted. On October 1, 2004, most entitlements of Contractors to the long-term firm SLCA Integrated Projects capacity and energy available at that time were reduced by seven (7) percent to provide power for new preference customers. WAPA amended the existing contracts with the Contractors to implement this decision.

2.14 The existing contracts expire on September 30, 2024. WAPA published its Proposed 2025 Marketing Plan on December 16, 2015 (80 FR 78222), for the marketing of SLCA Integrated Projects' hydroelectric power and energy for a period beginning October 1, 2024.

2.15 In the November 29, 2016, Federal Register (81 FR 85946) WAPA announced its Final 2025 Salt Lake City Area Integrated Projects Marketing Plan (hereinafter called the "2025 Marketing Plan"), extending existing capacity and energy allocations to existing Contractors of SLCA Integrated Projects, while recognizing additional project development may occur in future years. It also provided for establishing a new Firm Electric Service contract based upon the existing SLCA Integrated Projects contract.

2.16 The Contractor desires to purchase and WAPA is willing to furnish Firm Electric Service from the SLCA Integrated Projects under the terms and conditions stated herein.

3. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto agree as follows.

4. TERM OF CONTRACT

4.1 This Contract shall become effective as of the date in Section 1 above or October 1, 2017, whichever is later, and will remain in effect through the end of the calendar day on September 30, 2057, subject to prior adjustments, modifications, or termination as provided herein.

4.2 The delivery of Firm Electric Service under this Contract shall commence October 1, 2024.

4.3 The delivery of Firm Electric Service from the effective date hereof through the end of the calendar day on September 30, 2024, shall be subject to the terms and conditions of Contract No. 87-SLC-0015, except that sections 7.1.6, 13, 14, and 15 of this Contract shall become effective for all Firm Electric Service deliveries on or after the effective date hereof. Except as provided above, in the event of a conflict between the terms of Contract No. 87-SLC-0015 and the terms of this Contract, the terms of Contract No. 87-SLC-0015 shall control through the end of calendar day September 30, 2024, and the terms of this Contract shall control thereafter.

5. RELATED CONTRACTS

5.1 The Contractor's SLCA Integrated Projects Contract No. 87-SLC-0015 with

WAPA expires by its own terms and terminates in its entirety at the end of the calendar day on September 30, 2024.

- 5.2 Termination of Contract No. 87-SLC-0015 and implementation of this Contract shall occur simultaneously, at the end of the calendar day on September 30, 2024, with no disruption in delivery of Firm Electric Service.
- 5.3 In the event that Contract No. 87-SLC-0015 is terminated prior to the end of the calendar day on September 30, 2024, this Contract shall terminate effective with the termination of the Contract No. 87-SLC-0015, unless otherwise provided.
- 5.4 The Contract Rate of Delivery (CROD), as defined in Section 6.2, with associated energy under Contract No. 87-SLC-0015 may be modified prior to October 1, 2024, based upon the terms in Contract No. 87-SLC-0015. If modifications are made to Contract No. 87-SLC-0015, such as reductions, withdrawals, restrictions, limits, penalties, termination, additions, increases, and any other applicable adjustment prior to October 1, 2024, the same modifications shall be made to this Contract and any applicable exhibits and attachments.
- 5.5 If applicable, certain allocation holders identified in Contract No. 87-SLC-0015 have assigned their CROD and associated energy allocations to Contractor, and those assigned allocations are included in this Contract as allowed by the terms of the assignment. If Contract No. 87-SLC-0015 terminates prior to the end of the

calendar day on September 30, 2024, any applicable allocation assignment agreement(s) shall terminate concurrently.

6. DEFINITIONS

For the purposes of this Contract:

6.1 Available Hydro Power (AHP) is the maximum amount of hydroelectric capacity and energy that will be made available to the Contractor monthly as determined by WAPA based on prevailing water release conditions and set forth in Exhibit A; Provided, however, that AHP shall not be less than the Contractor's Sustainable Hydro Power.

6.2 Contract Rate of Delivery (CROD) is the maximum level of long-term capacity that the Contractor is entitled to receive in each Season as set forth in Section 7 and in Exhibit A of this Contract. The CROD is the Contractor's allocated share of the SLCA Integrated Projects marketing commitment level established for each Season through the term of this Contract. CROD is met first with the Contractor's AHP, and then with Customer Displacement Power or Western Replacement Power, or a combination thereof.

- 6.3 Contractor is a preference customer within the marketing area of the SLCA Integrated Projects. Contractors refers to all SLCA Integrated Projects customers.
- 6.4 Contracting Officer is the officer executing this Contract, a duly appointed successor, or a duly authorized representative.
- 6.5 Customer Displacement Power (CDP) is the amount of supplemental power acquired or generated by the Contractor on its own behalf, or by a third party on behalf of Contractor, which if provided by Contractor under Section 7 may be used, as required, as part of the Contractor's CROD and Monthly Energy within a given period.
- 6.6 Designated Points of Delivery are those points described in Exhibit A where Firm Electric Service furnished by the SLCA Integrated Projects is delivered to the Contractor or to a transmission agent for further delivery to the Contractor.
- 6.7 Firm Electric Service is the firm energy and capacity provided by WAPA at Designated Points of Delivery.
- 6.8 Firming Power is power purchased by WAPA from time-to-time which it determines to be required in order to meet its commitments for AHP and Seasonal SHP Energy.

- 6.9 Long Term Western Replacement Power (Long Term WRP) is the amount of Western Replacement Power that WAPA will purchase for the Contractor for a specified period of at least one (1) year pursuant to Section 7.3 which will be used, as required, as part of the Contractor's CROD and Monthly Energy within the given period.
- 6.10 Monthly Capacity is the maximum quantity of firm capacity expressed in kilowatts (kW) that WAPA is committed to deliver and the Contractor is entitled to receive each month, pursuant to Section 7.8.
- 6.11 Monthly Energy is the maximum quantity of total firm energy expressed in kilowatt-hours (kWh) that WAPA is committed to deliver and the Contractor is entitled to receive each month pursuant to Sections 7.1.3 and 7.8, and as set forth in Exhibit A.
- 6.12 Season or Seasonal is Summer or Winter Season.
- 6.13 Seasonal SHP Energy is the minimum quantity of firm energy expressed in kWh the Contractor is entitled to receive each Season as set forth in Section 7.1.2.
- 6.14 Seasonal Western Replacement Power (Seasonal WRP) is the maximum amount of Western Replacement Power WAPA will purchase for the Contractor during a

Season or shorter period of time, pursuant to Section 7.2, which will be used, as required, as part of the Contractor's CROD and Monthly Energy.

- 6.15 Summer Season is the six (6) month period from the first day of the April billing period through the last day of the September billing period of any calendar year.
- 6.16 Sustainable Hydro Power (SHP) is a level of long-term operable SLCA Integrated Projects hydroelectric capacity with energy, projected at an established risk level and supplemented by WAPA power purchases as may be required from time-to-time due to hydrological conditions, which level shall be fixed and made available to the Contractor each Season through a specified contract period. SHP will be established by WAPA in consultation with the Contractors, and set forth in the attached Exhibit A.
- 6.17 Western Replacement Power (WRP) is the amount of supplemental power requested by the Contractor to be acquired by WAPA on behalf of the Contractor as part of the Contractor's CROD and Monthly Energy within a given period and paid for by the Contractor on a pass-through-cost basis. WRP may also be purchased as Seasonal WRP, as provided for in Section 7.2, or as Long Term WRP, as provided for in Section 7.3.

6.18 Winter Season is the six (6) month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the following calendar year.

7. FIRM ELECTRIC SERVICE

7.1 WAPA's Energy and Capacity Obligations: WAPA, under the terms and conditions specified herein and within the available capacity of the substation and transmission facilities to deliver the Firm Electric Service at specific Designated Points of Delivery, will furnish Firm Electric Service to the Contractor, up to the mutually agreed upon Monthly Energy and Monthly Capacity set forth in Exhibit A.

7.1.1 The Seasonal CROD, SHP, AHP, and Monthly Capacity shall be as set forth in Section 3 of Exhibit A.

7.1.2 The Seasonal SHP Energy and Monthly SHP Energy shall be as set forth in Section 4 of Exhibit A.

7.1.3 The Monthly Energy available with the CROD shall be the sum of the Contractor's monthly portion of (1) Seasonal SHP Energy or energy associated with AHP, whichever is greater, plus (2) energy associated with WRP, plus (3) energy associated with the CDP as set forth in Exhibit A.

Monthly Energy available with the CROD shall not exceed 100 percent load factor.

7.1.4 If the Seasonal SHP Energy and the CROD are changed due to exchanges of energy and capacity in accordance with Section 8 of the Contract, any such changes will be reflected prior to the beginning of each Season in a revision to Exhibit A.

7.1.5 Should WAPA determine that hydrology projections, operational or other changes, show AHP energy or capacity in sufficient quantities to be made available above that identified as AHP in Exhibit A, WAPA shall first offer said energy or capacity to its Contractors. Appropriate written notification from WAPA will be given to the Contractor.

7.1.6 WAPA may revise the amount of the Contractor's Seasonal SHP Energy or Seasonal CROD as required to respond to changes in hydrology and river operations, upon five (5) years' notice to the Contractor.

7.2 Seasonal WRP: The procedure for acquiring Seasonal WRP is as follows, and the schedule of dates by which the terms of Seasonal WRP are to be complied with are listed in Attachment No. 2.

- 7.2.1 WAPA will notify the Contractor in writing as to what portion of the CROD in the upcoming season will be supplied from AHP. The notification will also provide WAPA's estimated price of purchasing Seasonal WRP for the upcoming Season and any advancement of funds necessary pursuant to Section 7.5. This notice will be in substantially the same form as Attachment No. 1.
- 7.2.2 The Contractor will provide authorization by returning the form to WAPA indicating the amount of Seasonal WRP that it requests WAPA to purchase for the upcoming Season. Such written notice will constitute a commitment by the Contractor to pay its share of WAPA's cost of the Seasonal WRP pursuant to this Section 7.2, except when power is not available per Section 7.2.3. The amount of Seasonal WRP for which notice is provided by the Contractor for a Season may vary by month. Such monthly amounts must be so indicated in the Contractor's notification.
- 7.2.3 Upon receipt of the authorization from the Contractor, pursuant to Section 7.2.2, WAPA will endeavor to purchase the requested Seasonal WRP. If the power is not available for purchase by WAPA under the authorized terms and conditions, WAPA shall notify the Contractor. If the Contractor then chooses to rescind its request for WRP, it must do so promptly in writing.

- 7.2.4 At the beginning of the billing period for each Season, WAPA will notify the Contractor of any revisions to WAPA's estimated price for Seasonal WRP for each month of the Season.
- 7.2.5 WAPA will include in its regular monthly power bill to the Contractor WAPA's cost of providing Seasonal WRP for that month.
- 7.2.6 The costs associated with Seasonal WRP shall reflect additional costs, if any, incurred by WAPA for energy purchased as Seasonal WRP, as compared with the cost WAPA has determined is necessary to support its monthly energy commitments without Seasonal WRP purchases. Such additional costs shall be limited to the net cost of such energy calculated by subtracting from WAPA's total cost of providing the energy (i) the revenues received by WAPA from the sale of such energy, and (ii) if used by WAPA for Firming Power, the estimated cost for such Firming Power that WAPA otherwise would have incurred.
- 7.2.7 If the Contractor has paid in excess of WAPA's actual cost of the Seasonal WRP provided to the Contractor during the Season, WAPA will credit the amount toward payment of the Contractor's next practicable service month power bill unless otherwise mutually agreed. If the Contractor has paid less than WAPA's actual costs of Seasonal WRP accepted by the

Contractor during the Season, WAPA will bill the Contractor for such amount in its next practicable service month power bill unless otherwise mutually agreed. When advanced funds are needed, pursuant to Section 7.5, the provisions in Subsection 7.2.7 shall not be applicable.

7.3 Long Term WRP: The procedure for acquiring Long Term WRP is as follows, and the schedule of dates by which the terms of Long Term WRP are to be met is listed in Attachment No. 3.

7.3.1 WAPA will notify the Contractor as to what portion of the Contractor's CROD is expected to be supplied from AHP for the remainder of the Contract.

7.3.2 If the Contractor is interested in acquiring Long Term WRP, the Contractor will notify WAPA of the amount of Long Term WRP desired, the period of time for which the Contractor is willing to commit to purchase that amount, and the maximum price that the Contractor would be willing to have WAPA pay to purchase Long Term WRP. These will be used by WAPA in soliciting and evaluating potential power purchase options and will limit any obligation of WAPA to provide Long Term WRP.

- 7.3.3 After receipt of the notice(s) referenced in Section 7.3.2, WAPA shall request proposals from power suppliers for power to supply the request(s) for Long Term WRP.
- 7.3.4 Once WAPA receives and evaluates proposals from suppliers, WAPA shall inform the Contractor of the length of commitment, terms, and conditions, including adequacy of transmission, under which Long Term WRP is available. WAPA will also notify the Contractor of any advancement of funds needed pursuant to Section 7.5.
- 7.3.5 The Contractor shall provide written authorization to WAPA to contract for the Long Term WRP under the specified terms and conditions. Such written authorization will constitute a commitment by the Contractor to pay its share of the cost of the Long Term WRP under the terms and conditions specified.
- 7.3.6 Only upon receipt of written authorization from the Contractor will WAPA pursue purchasing Long Term WRP for the Contractor. If the power is not available for purchase by WAPA under the authorized terms and conditions, WAPA will notify the Contractor of the changes. If the Contractor then chooses to rescind its request for Long Term WRP, it must do so promptly in writing. Service shall normally begin on the first day of the next Season.

- 7.3.7 The Contractor may commit to more than one Long Term WRP arrangement; Provided, That its request for Long Term WRP, when combined with the Contractor's SHP, other WRP commitments and CDP commitments, shall not exceed the Contractor's CROD, or 100 percent load factor of the CROD.
- 7.3.8 WAPA will include in its regular monthly power bill to the Contractor WAPA's cost of Long Term WRP for that month. The cost will be calculated by placing WAPA's total Long Term WRP costs into a cost pool for each term of commitment of Long Term WRP, and then prorating the costs to the Contractor in proportion to its share of Long Term WRP in that pool.
- 7.3.9 Determination of WAPA's actual costs for Long Term WRP and excess or deficient payments by the Contractor for Long Term WRP will be made at the end of WAPA's fiscal year. If the Contractor has paid in excess of WAPA's actual costs of the Long Term WRP, WAPA will reflect such excess amount in a credit to the Contractor's amount of payment to be made in the next practicable service month power bill, unless otherwise mutually agreed. If the Contractor has paid less than WAPA's actual costs of Long Term WRP, WAPA will bill such deficiency to the Contractor in its next practicable service month power bill, unless otherwise mutually

agreed. When advanced funds are needed, pursuant to Section 7.5, these provisions in Subsection 7.3.9 shall not be applicable.

7.3.10 If requested by the Contractor, WAPA shall attempt to sell any energy associated with Long Term WRP that is in excess of the Contractor's needs. If WAPA sells such energy, WAPA shall credit the Contractor's charges for Long Term WRP by any revenues obtained, less WAPA's costs, if any, to provide this service.

7.4 Cost of Providing WRP: WAPA's cost of providing WRP shall not be included in the capacity and energy rates charged to the Contractor under the SLCA Integrated Projects Firm Power Rate Schedule.

7.5 Advancement of Funds

7.5.1 WAPA may make purchases of WRP from the funds it has available. In the event that WAPA does not have sufficient funds to make WRP purchases, the Contractor will provide its pro-rata share of funds in advance for WAPA's use in purchasing WRP on the Contractor's behalf. The notice provided to the Contractor by WAPA pursuant to Sections 7.2.1 and 7.3.4 will notify the Contractor as to its pro-rata share, if an advance is needed. The Contractor shall submit the advanced funds to WAPA with the written authorization pursuant to Sections 7.2.2 or

7.3.5. Advanced funds will be credited to a separate account and will be held by WAPA for the Contractor to be used solely for purchases of WRP. When advanced funds are needed, Sections 7.2.7 and 7.3.9 shall not be applicable. The amounts advanced will be determined according to the following criteria:

7.5.1.1 For Seasonal WRP, the Contractor will advance an amount equal to (i) one third of the estimated cost of Seasonal WRP to be purchased by WAPA on behalf of the Contractor in the upcoming Season, less (ii) the amount, if any, held by WAPA for purchases of Seasonal WRP on behalf of the Contractor for the current Season; Provided, That if the amount held by WAPA for the current Season is greater than the amount required for the upcoming Season, the difference will either be refunded to the Contractor after the current Season or, at the Contractor's option, be reflected as a credit in the Contractor's next power bill.

7.5.1.2 If the Contractor fails to advance WAPA sufficient funds for Seasonal WRP in accordance with the amounts and schedules set forth in Sections 7.5.1.1, WAPA will not purchase Seasonal WRP on the Contractor's behalf for that upcoming Season.

7.5.1.3 For Long Term WRP, the Contractor will advance an amount equal to (i) the next two (2) months of the estimated cost of the Long Term WRP to be purchased by WAPA on behalf of the Contractor, less, (ii) the amount, if any, then held by WAPA for purchases of Long Term WRP on behalf of the Contractor; Provided, That if the amount then held by WAPA is greater than the amount required for the next two (2) months, the difference will either be refunded to the Contractor by WAPA or at the Contractor's option, be reflected as a credit in the Contractor's next power bill.

7.5.1.4 Upon termination of the Contract, any funds advanced by the Contractor that are still held by WAPA and are in excess of amounts owed to WAPA will be refunded to the Contractor.

7.6 Customer Displacement Power: The procedure for acquiring CDP is as follows, and the schedule of dates by which the terms of CDP are to be met are listed in Attachment No. 4.

7.6.1 The Contractor may, individually or in association with other Contractors of the SLCA Integrated Projects, furnish written notice to WAPA that it wishes to provide to WAPA, for delivery to the Contractor, CDP for a portion or all of the power above AHP and WRP up to the CROD and for

which it has not otherwise provided notification for Seasonal WRP or Long Term WRP in accordance with the notification guidelines set forth in Section 7.2 or 7.3. CDP may only be accepted in time periods offered for Seasonal or Long Term WRP.

- 7.6.2 The Contractor will furnish with its notification to provide CDP pursuant to Section 7.6.1, information regarding the source and point of receipt of power, the amount of power to be provided, the initial month of delivery, the commitment length, the designation of the scheduling entity, and any prescheduling and scheduling requirements and restrictions. WAPA will determine its ability to deliver this CDP in accordance with Section 7.7.3.
- 7.6.3 The Contractor may request a change or modification to the source(s) or conditions of CDP at any time prior to or during a Season upon written notification to WAPA's appropriate scheduling office. WAPA shall make its best efforts to expedite its determination of its ability to accept this CDP for delivery to the Contractor and shall so notify the Contractor, in writing, of its determination as soon as possible. However, WAPA shall have the sole determination of its ability to accept this CDP under the new conditions.

7.6.4 Any portion of CDP not supplied pursuant to Section 7.6.1 will be deemed to be supplied pursuant to this Section 7.6. WAPA will not be responsible for firming CDP purchases made by the Contractor.

7.7 Transmission Provisions

7.7.1 Reserved Firm Capacity (RFC) in the CRSP transmission system will be maintained by WAPA to deliver the Contractor's CROD, to meet other firm transmission and firm exchange commitments, and to serve loads solely dependent upon transmission service on WAPA's system. The Contractor's AHP, WRP, and CDP, where CDP has been accepted by WAPA pursuant to Section 7.6.2, will be treated as firm deliveries up to the Contractor's CROD. Procedures for management of curtailments shall be contained in Scheduling, Accounting, and Billing Procedures (SABPs), as referenced in Section 10, jointly developed and executed by both Parties.

7.7.2 To the extent that actual AHP, combined with the sum of contractual commitments by the Contractor for purchase of Long Term WRP, Seasonal WRP, and CDP, result in capacity greater than the Contractor's CROD, it is the Contractor's responsibility to arrange for transmission and delivery of any Long Term WRP, Seasonal WRP, and CDP in excess of the Contractor's CROD. Additionally, the Contractor shall independently

arrange for delivery to itself of all CDP over and above CDP accepted by WAPA for delivery to the Contractor pursuant to Section 7.6.

7.7.3 Pursuant to the CRSP Joint Planning Agreement Principles No. 96-SLC-0315, as may be amended, WAPA shall engage in a consultative process with the Contractors for determination of (i) the transmission capacity of the existing CRSP transmission system and any modification or additions thereto, (ii) the capacity in the system needed to meet the RFC requirement of Section 7.7.1, and (iii) any remaining available transmission capacity that could be made available for other firm transmission purposes.

7.7.3.1 Determination of transmission availability among competing new requests for WRP and CDP will be based, among other things, on the length of the commitment, i.e., for the upcoming Season or in increments offered by WAPA for Long Term WRP, with requests of longer commitment lengths being given higher priority. Prior to the beginning of Long Term WRP, as established in Section 7.3 of this Contract, the maximum commitment length for WRP and CDP will be the upcoming Season.

7.7.3.2 For requests of WRP and CDP of equal commitment length, WRP and CDP will share current RFC pro-rata when such concurrent

requests exceed estimated RFC. Prior to the first Long Term WRP commitment date, as established in Section 7.3 of this Contract, requests received through the date of the Contractor's notice for Seasonal WRP will be considered as being received concurrent for the upcoming Season. Subsequent to the first commitment date for Long Term WRP, requests for CDP will be considered as outlined in Attachment No. 4.

7.7.3.3 The commitment length for CDP can be no longer than the Contractor's purchase commitment to the resource designated at WAPA's point of receipt.

- 7.8 Monthly Commitments: At least sixty (60) days before the beginning of each Season, the Contractor and the Contracting Officer shall establish the Monthly Energy and Monthly Capacity for the upcoming Season at each Designated Point of Delivery; Provided, however, that Monthly Capacity in any month may not exceed the Contractor's CROD as set forth in Section 7.1.1. The Monthly Energy and Monthly Capacity will be set forth in Exhibit A. Energy or capacity may not be transferred from month to month without revision to Exhibit A.
- 7.9 Minimum Hourly Delivery: The Minimum Hourly Delivery shall be 35 percent of the total of the Contractor's CROD, or the Contractor's total load, whichever is less, or as otherwise set forth in Exhibit A. Upon request of the Contractor, the

requirement for a Minimum Hourly Delivery may be waived by WAPA, if operating conditions permit. At no greater than 2-year intervals, WAPA, in consultation with its Contractors, shall reevaluate, and may revise, the minimum hourly delivery. Such revision will be reflected in a revised Exhibit A.

- 7.10 Operating Reserves: WAPA is able to provide operating reserves for the Contractor for AHP. To the extent that the Contractor's CDP or WRP from a third-party purchase includes the provision of operating reserves, WAPA shall allow the Contractor to claim such reserves from any unscheduled portion of CDP or WRP.
- 7.11 Designated Point(s) of Delivery and Voltages: Firm Electric Service furnished by WAPA to the Contractor will be delivered at the point(s) and voltage(s) set forth in Exhibit A. Charges and losses will be established as follows: (i) any transmission costs and associated losses incurred in the delivery of AHP to the Designated Point(s) of Delivery described in Exhibit A shall be the responsibility of WAPA, (ii) losses in the delivery of WRP and/or CDP shall be the responsibility of the Contractor, and (iii) any transmission costs and associated losses in the delivery of Firm Electric Service beyond the Designated Point(s) of Delivery shall be the responsibility of the Contractor.
- 7.12 Metering: The point(s) of measurement, metering voltage(s), and ownership of metering equipment shall be set forth in the SABPs entered into pursuant to

Section 10 hereof. Insofar as the Firm Electric Service delivered hereunder may be measured at point(s) and/or voltage(s) other than the Designated Point(s) of Delivery, the measured amount(s) may be adjusted for losses between the Designated Point(s) of Delivery and the point(s) of measurement as set forth in said SABPs.

7.13 Transmission Agent: Not Applicable.

7.14 Firming Power

7.14.1 In the event that actual power produced by SLCA Integrated Projects generation is inadequate to meet AHP or Seasonal SHP Energy as set forth in Exhibit A, WAPA will purchase Firming Power required to meet any shortfall. The cost of such Firming Power purchases, as well as revenues from any associated short term power sales, shall be included in the capacity and energy rates charged to the Contractor under the then-current SLCA Integrated Projects Firm Power Rate Schedule.

7.14.2 Any expenses deemed non-reimbursable pursuant to Section 1807 of the Grand Canyon Protection Act of 1992, Pub. L. 102-575, shall be treated as non-reimbursable expenses.

8. EXCHANGE OF ENERGY AND CAPACITY

In order to optimize use of SLCA Integrated Projects' resources, WAPA will consider, subject to the conditions set forth herein, an exchange of energy and/or capacity between Contractors. If the Contractor desires an exchange of energy and/or capacity, it must submit a request sixty (60) days prior to the anticipated effective date of the exchange of energy and/or capacity. WAPA will then review requests on the basis of its operational requirements. If operational requirements permit, requesting Contractors will be offered a letter agreement, for an exchange of energy and/or capacity. The Contractor will return the signed letter agreement accepting the proposed exchange. The Seasonal Energy and the Contract Rates of Delivery will then be increased or decreased, as necessary, in a revision to Exhibit A. Any exchange of energy and/or capacity is at the discretion of WAPA, and WAPA may elect to not facilitate an exchange. In the event WAPA does facilitate an exchange, the exchange is for the approved period only, and at the end of that approved period the Contractor's Seasonal Energy and Contract Rates of Delivery will revert to those amounts set forth in Section 7.1.

9. SCHEDULE OF RATES

The Contractor shall pay WAPA for the Firm Electric Service furnished hereunder in accordance with rates, charges, and conditions set forth in the General Power Contract Provisions (GPCPs) dated as of September 1, 2007, and in applicable Rate Schedule, both attached hereto and made a part hereof, or any superseding rate schedules.

10. SCHEDULING, ACCOUNTING, AND BILLING PROCEDURES

10.1 Written SABPs, shall be developed and agreed upon by the authorized representatives of the Parties before the date of initial service under this Contract. The SABPs are intended to implement the terms of this Contract but not to modify or amend it and are, therefore, subordinate to this Contract. Revisions to the SABPs may be needed to meet operational requirements and such revisions shall be made in accordance with Section 10.3. Any revisions to the SABPs shall be developed in consultation with the Contractor.

10.2 Deliveries of Firm Electric Service hereunder may be scheduled in advance as determined by the Contracting Officer, on an hourly basis, emergencies excepted, and accounted for on the basis of such advance schedules, all in accordance with SABPs agreed upon in advance between the authorized representatives. Said SABPs will specify the conditions under which inadvertent deliveries, which are greater or less than scheduled deliveries, shall be corrected in later deliveries. If operating conditions warrant and WAPA so notifies the Contractor, WAPA may,

at its option, revise the Contractor's schedule or request the Contractor to schedule its resources from the SLCA Integrated Projects to approximate normal hourly and/or daily load patterns to avoid abrupt changes in water releases and generation levels or other undesirable results. The Contractor will initiate hourly scheduling within ninety (90) days of a request by WAPA.

- 10.3 In the event the Contractor fails or refuses to execute the initial SABPs or any revised SABPs which WAPA determines to be necessary due to changes in this Contract or the power system of either Party, WAPA will temporarily implement essential procedures as determined by WAPA until mutually acceptable SABPs have been developed and executed by the authorized representatives.

## 11. POWER FACTOR

- 11.1 The Contractor will be expected to maintain the power factor specified in the attached rate schedule or the GPCPs. If the power factor requirements under applicable rate schedule(s) and the GPCPs are not the same, the more stringent requirement will apply.
- 11.2 If the applicable power factor standard is not complied with, WAPA may, after giving the Contractor ninety (90) days' written notice to correct the condition or such additional time as warranted by circumstances, make delivery system improvements associated with power factor correction at the Contractor's expense

to WAPA's system or to the system used by the Contractor with the agreement of the Contractor and/or Third Party Service Provider. If WAPA is required to pay for delivery system improvements associated with power factor correction on the systems of its transmission agents, which are attributable to conditions on the system used by the Contractor, the Contractor shall pay for the cost of such improvements.

12. INTEGRATED RESOURCE PLANS AND SMALL CUSTOMER PLANS

12.1 The Contractor shall comply with the Integrated Resource Plan (IRP) or Small Customer Plan requirements, as applicable, in accordance with the Program. If the Contractor submits an IRP with a State or Tribal regulatory body, that same plan may be submitted to WAPA for approval in meeting the IRP or Small Customer Plan requirements.

12.2 WAPA shall administer the IRP or Small Customer Plan requirements, as applicable, in accordance with the Program.

12.3 Failure to comply with the IRP or Small Customer Plan requirements, after exhaustion of all appeals, will result in the application of penalties as specified in the Program.

12.4 In the event that WAPA, or any successor agency, shall promulgate changes to the IRP portion of the Program following its initial adoption as published in the Federal Register at 60 FR 54151 (October 20, 1995), the Contractor, by written notice to the Contracting Officer within ninety (90) days after the effective date of a Program change, may elect to terminate this Contract. The termination shall be effective one (1) year from the date of receipt of the notice by WAPA.

13. ENVIRONMENTAL ATTRIBUTES

WAPA shall allocate to the Contractor available environmental attributes, such as renewable energy credits/certificates (RECs), that exist from SLCA Integrated Projects hydroelectric generation. Environmental attributes are considered bundled with the energy (kWh) allocation, and the Contractor has the right, but not the obligation, to take title and ownership to its proportionate share based upon its energy allocation set forth in Section 7.1.

14. GENERAL POWER CONTRACT PROVISIONS

The GPCPs effective September 1, 2007, attached hereto, are hereby made a part of this Contract the same as if they had been expressly set forth herein; Provided, That Articles 1.2 and 20 through 30, shall not apply or be incorporated herein; Provided, That Contractor transactions utilizing capacity and/or energy under this Contract with an entity or entities that coordinate, control, monitor, or support operation of the bulk electric system, or act as a marketplace operator of wholesale power, or procure products or service on behalf of any such entity, including but not limited to independent system

operators, regional system operators, transmission organizations, balancing authorities, or successor organizations associated with the Contractor's load shall not be considered a sale for resale.

15. CREDITWORTHINESS

The WAPA Creditworthiness Procedures effective September 1, 2017, attached hereto, are hereby made a part of this Contract the same as if they had been expressly set forth herein.

16. REVIEW OF FINANCIAL AND WORK PROGRAM DATA

Letter Agreement No. 92-SLC-0208 dated September 24, 1992, as supplemented, or any superseding agreement, among the Salt Lake City Area Office of WAPA, the Upper Colorado Region of the Bureau of Reclamation, and Colorado River Energy Distributors Association provides for implementation of the Statement of Principles and Joint Procedures for Contractor review of financial and work program data relating to rates of the SLCA Integrated Projects. This Letter Agreement and supplement are attached hereto as Attachment No. 5, and incorporated into this Contract and implemented as provided for therein.

17. EXHIBITS AND AMENDMENTS

Inasmuch as certain provisions of this Contract may change during the term hereof, they will be set forth in exhibits from time-to-time agreed upon by the authorized representatives of the Parties. The initial Exhibit A, and all future exhibits shall be

attached hereto and made a part hereof, and each shall be in force and effect in accordance with its terms unless superseded by a subsequent exhibit. This Contract may be amended or modified only by an amendment or modification duly executed by the Parties.

18. AUTHORIZED REPRESENTATIVES OF THE PARTIES

Each Party shall, by written notice to the other, designate the representative(s) who is (are) authorized to act on its behalf with respect to those matters contained herein which are the functions and responsibilities of its authorized representative(s). Either Party may change the designation of its authorized representative(s) upon written notice.

19. AUTHORITY TO EXECUTE

The Preamble and Explanatory Recitals of this Contract are incorporated by reference herein. Each individual signing this Contract certifies that the Party represented has duly authorized such individual to execute this Contract that binds and obligates the Party.

IN WITNESS WHEREOF, The Parties hereto have caused this Contract to be duly executed the day and year first written above.

U.S. DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION

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

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

Address: CRSP Management Center

299 South Main Street, Suite 200

Salt Lake City, UT 84111

CITY OF AZTEC

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

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

Address: \_\_\_\_\_

EXHIBIT A

POINTS OF DELIVERY, VOLTAGES, AND DELIVERY OBLIGATIONS

1. This Exhibit A is made this \_\_\_\_ day of \_\_\_\_\_, 2017, to be effective October 1, 2024, under and as part of Contract No. 17-SLC-0880, dated \_\_\_\_\_, hereinafter called the "Contract," and shall remain in effect until superseded by another Exhibit A in accordance with the provisions of the Contract; Provided, That this Exhibit A or any superseding Exhibit A shall be terminated by the expiration of the Contract.

2. Point(s) of Delivery and Voltages: SLCA Integrated Projects firm energy and capacity will be delivered pursuant to the Contract at the point(s) of delivery and voltages listed below.

<u>Point(s) of Delivery</u>	<u>Nominal Voltage (kV)</u>
Shiprock Substation	115-kV

3. Contract Rate of Delivery (CROD), Sustainable Hydro Power (SHP), Available Hydro Power (AHP), and Monthly Capacity

3.1 SLCA Integrated Projects Monthly Capacity, in kilowatts (kW), will be delivered pursuant to the Contract in the quantities listed in the Attachment to Exhibit A, Capacity and Energy Table below. Capacity available to the Contractor from

hydro power shall be the greater of SHP or AHP. Total Monthly Capacity shall be the sum of: (1) the greater of SHP or AHP; and (2) WRP and CDP.

3.2 Except as modified by Section 7.1.4 and/or 7.1.6 of the Contract, the Seasonal CROD shall be as follows:

Winter Season	2,584 kW
Summer Season	1,896 kW

4. Seasonal SHP Energy and Monthly SHP Energy

4.1 SLCA Integrated Projects firm energy, in kilowatt-hours (kWh) will be delivered pursuant to the Contract in the quantities listed in the Attachment to Exhibit A, Monthly Capacity and Energy Table below, at the monthly energy amount applicable to that billing period. Energy may not be transferred from month to month without revision to the Attachment to this Exhibit A.

4.2 Except as modified by Section 7.1.4 and/or 7.1.6 of the Contract, the Seasonal SHP Energy shall be as follows:

Winter Season	4,660,318 kWh
Summer Season	3,443,928 kWh

- 5. Attachment to Exhibit A, Monthly Capacity and Energy Table (Attachment): The Attachment may be revised from time-to-time by mutual agreement of the Parties as evidenced by signed concurrence to the revision.

IN WITNESS WHEREOF, the Parties hereto have caused this Exhibit A to be duly executed the day and year first written above.

U.S. DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: CRSP Management Center  
299 South Main Street, Suite 200  
Salt Lake City, UT 84111

CITY OF AZTEC

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Salt Lake City Area Integrated Projects Power Sales Rate History

Rate Schedule	Effective Dates	Energy (Mills/kWh)	Capacity (\$/kW-mo.)	Combined (Mills/kWh) 1/	Composite (Mills/kWh) 2/
SLIP-F1	10/87-9/90	5	\$2.09	9.92	-
SLIP-F2	10/90-11/91	7.25	\$3.08	14.5	-
SLIP-F3	12/91-9/92	8.1	\$3.44	16.2	-
SLIP-F4	10/92-9/94	8.4	\$3.54	16.72	-
SLIP-F5	12/94-4/98	8.9	\$3.83	-	20.17
SLIP-F6	4/98-9/02	8.1	\$3.44	-	17.57
SLIP-F7	10/02-9/06	9.5	\$4.04	-	20.72
SLIP-F8	10/06-9/08	10.43	\$4.43	-	25.28
SLIP-F9 (1st Step)	10/08-9/09	11.06	\$4.70	-	26.8
SLIP-F9 (2nd Step)	10/09-9/15	12.19	\$5.18	-	29.62
SLIP-F10	10/15-Present	12.19	\$5.18	-	29.42

The Salt Lake City Area Integrated Projects is a combination of resources from the Collbran, CRSP, and Rio Grande Projects.

1/ Combined rates are calculated with a load factor which is assumed to be constant over a given period. In the SLCA/IP, the load factor is considered to be 58.2 percent.

2/ Composite Rates are calculated by dividing the required revenue by the amount of energy sold. This methodology works independently of the load factor of the sales.

Updated: 4/1/2016

Rate Schedule SLIP-F10  
(Supersedes Schedule SLIP-F9)

**UNITED STATES DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION**

**COLORADO RIVER STORAGE PROJECT MANAGEMENT CENTER  
SALT LAKE CITY AREA INTEGRATED PROJECTS**

**SCHEDULE OF RATES FOR FIRM POWER SERVICE**  
**(Approved Under Rate Order No. WAPA-169)**

Effective:

Rate Schedule SLIP-F10 will be placed into effect on an interim basis on the first day of the first full-billing period beginning on or after October 1, 2015, and will remain in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis through September 30, 2020, or until the rate schedules are superseded.

Available:

In the area served by the Salt Lake City Area Integrated Projects.

Applicable:

To the wholesale power customer for firm power service supplied through one meter at one point of delivery or as otherwise established by contract.

Character:

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

DEMAND CHARGE: \$5.18 per kilowatt of billing demand.

ENERGY CHARGE: 12.19 mills per kilowatthour of use.

**COST RECOVERY CHARGE:**

To adequately recover and maintain a sufficient balance in the Basin Fund, Western uses a cost recovery mechanism, called a Cost Recovery Charge (CRC). The CRC is a charge on all SHP energy.

This charge will be recalculated before May 1 of each year, and Western will provide notification to the customers. The charge, if needed, will be placed into effect on the first day of the first full-billing period beginning on or after October 1, 2015, through September 30, 2020. If a Shortage Criteria is necessary, the CRC will be re-calculated at that time. (See Shortage Criteria Trigger explanation below.) The CRC will be calculated as follows:

**WESTERN HAS THE DISCRETION TO IMPLEMENT A CRC BASED ON  
THE TIERS BELOW.**

**TABLE: CRC Tiers**

<b>Tier</b>	<b>Criteria, If the BFBB is:</b>	<b>Review</b>
i	Greater than \$150 million, with an expected decrease to below \$75 million	Annually
ii	Less than \$150 million but greater than \$120 million, with an expected 50-percent decrease in the next FY	
iii	Less than \$120 million but greater than \$90 million, with an expected 40-percent decrease in the next FY	
iv	Less than \$90 million but greater than \$60 million, with an expected 25-percent decrease in the next FY	Semi-Annual (May / November)
v	Less than \$60 million but greater than \$40 million with an expected decrease to below \$40 million in the next FY	Monthly

TABLE: SAMPLE CRC CALCULATION

	Description	Example	Formula
<b>STEP ONE</b>	<b>Determine the Net Balance available in the Basin Fund.</b>		
	<b>BFBB</b> Basin Fund Beginning Balance (\$)	\$ 85,860,265	Financial forecast
	<b>BFTB</b> Basin Fund Target Balance (\$)	\$ 64,395,199	BFBB - (Tier % *BFBB), or BFTB for Tier i and Tier v <sup>1</sup>
	<b>PAR</b> Projected Annual Revenue (\$) w/o CRC	\$ 232,780,000	Financial forecast
	<b>PAE</b> Projected Annual Expenses (\$)	\$ 226,649,066	Financial forecast
	<b>NR</b> Net Revenue (\$)	\$ 6,130,934	PAR - PAE
	<b>NB</b> Net Balance (\$)	\$ 91,991,199	BFBB + NR
<b>STEP TWO</b>	<b>Determine the Forecasted Energy Purchase Expenses.</b>		
	<b>EA</b> SHP Energy Allocation (GWh)	4,952	Customer contracts
	<b>HE</b> Forecasted Hydro Energy (GWh)	4,924	Hydrologic & generation forecast
	<b>FE</b> Forecasted Energy Purchase (GWh)	504	EA - HE or anticipated
	<b>FFC</b> Forecasted Average Energy Price per MWh (\$)	\$ 34.23	From commercially available price indices
	<b>FX</b> Forecasted Energy Purchase Expense (\$)	\$ 17,262,512	FE * FFC *1000
<b>STEP THREE</b>	<b>Determine the amount of Funds Available for firming energy purchases, and then determine additional revenue to be recovered. The following two formulas will be used to determine FA: the lesser of the two will be used.</b>		
	<b>FA1</b> Basin Fund Balance Factor (\$)	\$ 17,262,512	If (NB>BFBB,FX,FX -(BFTB - NB))
	<b>FA2</b> Revenue Factor (\$)	\$ 17,262,512	If (NR>-(BFBB-BFTB), FX, FX+NR +(BFBB-BFTB))
	<b>FA</b> Funds Available (\$)	\$ 17,262,512	Lesser of FA1 or FA2 (not less than \$0)
	<b>FARR</b> Additional Revenue to be Recovered (\$)	\$ 0	FX - FA
<b>STEP FOUR</b>	<b>Once the FA for purchases have been determined, the CRC can be calculated, and the WL can be determined.</b>		
	<b>WL</b> Waiver Level (GWh)	5428	If (EA<HE,EA,HE+(FE*(FA/FX))), but not less than HE
	<b>WLP</b> Waiver Level Percentage of Full SHP	110%	WL/EA*100
	<b>CRCE</b> CRC Energy (GWh)	0	EA - WL
	<b>CRCEP</b> CRC Energy Percentage of Full SHP	0%	CRCE/EA*100
	<b>CRC</b> Cost Recovery Charge (mills/kWh)	0	FARR/(EA*1,000)

Notes: 1- Use CRC Tiers Table to calculate applicable value

Narrative CRC Example**STEP ONE: Determine the net balance available in the Basin Fund.**

BFBB – Western will forecast the Basin Fund Beginning Balance for the next FY.

$$\mathbf{BFBB = \$85,860,265}$$

BFTB – The Basin Fund Target Balance is based on the applicable tiered percentage, or minimum value, of the Basin Fund Beginning Balance derived from the **CRC Tiers** table with a minimum BFTB set at \$40 million.

$$\mathbf{BFTB = BFBB \text{ less } 25 \text{ percent, see Tier iv (BFBB < 90 million, BFBB > 60 million)}}$$

$$= \$85,860,265 - \$21,464,066$$

$$= \mathbf{\$64,395,199}$$

PAR – Projected Annual Revenue is Western’s estimate of revenue for the next FY.

$$\mathbf{PAR= \$232,780,000}$$

PAE – Projected Annual Expenses is Western’s estimate of expenses for the next FY. The PAE includes all expenses plus non-reimbursable expenses, which are capped at \$27 million per year plus an inflation factor. **This limitation is for CRC formula calculation purposes only, and is not a cap on actual non-reimbursable expenses.**

$$\mathbf{PAE = \$226,649,066}$$

NR – Net Revenue equals revenues minus expenses.

$$\mathbf{NR = PAR - PAE}$$

$$= \$232,780,000 - \$226,649,066$$

$$= \mathbf{\$6,130,934}$$

NB – Net Balance is the Basin Fund Beginning Balance plus net revenue.

$$\begin{aligned} \text{NB} &= \text{BFBB} + \text{NR} \\ &= \$85,860,265 + \$6,130,934 \\ &= \mathbf{\$91,991,199} \end{aligned}$$

**STEP TWO: Determine the forecasted energy purchases expenses.**

EA – The Sustainable Hydro Power Energy Allocation (from Customer contracts). This does not include Project Use customers.

$$\text{EA} = \mathbf{4,952 \text{ (GWh)}}$$

HE – Western’s forecast of Hydro Energy available during the next FY developed from Reclamation’s April, 24-month study.

$$\text{HE} = \mathbf{4,924 \text{ (GWh)}}$$

FE – Forecasted Energy purchases are the difference between the Sustainable Hydro Power allocation and the forecasted hydro energy available for the next FY or the anticipated firming purchases for the next year.

$$\text{FE} = \text{EA} - \text{HE or anticipated purchases}$$

$$= \mathbf{504.33 \text{ (GWh, anticipated)}}$$

FFC - The forecasted energy price for the next FY per MWh.

$$\text{FFC} = \mathbf{\$34.23 \text{ per MWh}}$$

FX – Forecasted energy purchase power expenses based on the current year’s, April, 24-month study, representing an estimate of the total costs of firming purchases for the coming FY.

$$\begin{aligned}
 \text{FX} &= \text{FE} * \text{FFC} * 1000 \\
 &= 504.33 * \$34.23 * 1000 \\
 &= \$17,263,215.90
 \end{aligned}$$

**STEP THREE:** Determine the amount of Funds Available (FA) to expend on firming energy purchases and then determine additional revenue to be recovered (FARR). The following two formulas will be used to determine FA; the lesser of the two will be used. Funds available shall not be less than zero.

A. Basin Fund Balance Factor (FA1)

If the Net Balance is greater than the Basin Fund Target Balance, use the value for forecasted energy purchase power expenses (FX). If the net balance is less than the Basin Fund Target Balance, reduce the value of the Forecasted Energy Purchase Power Expenses by the difference between the Basin Fund Target Balance and the Net Balance.

$$\begin{aligned}
 \text{FA1} &= \text{If } (\text{NB} > \text{BFTB}, \text{FX}, \text{FX} - (\text{BFTB} - \text{NB})) \\
 &= \$91,991,199 \text{ (NB) is greater than } \$64,395,199 \text{ (BFTB) then:} \\
 &= \$17,263,215.90 \text{ (FX)}
 \end{aligned}$$

If the Net Balance is greater than the Basin Fund Target Balance, then **FA1=FX**.

If the Net Balance is less than the Basin Fund Target Balance, then **FA1=FX-(BFTB-NB)**.

B. Basin Fund Revenue Factor (FA2)

The second factor ensures that Western collects sufficient funds to meet the Basin Fund Target Balance so long as the amount needed does not exceed the forecasted purchase expense (FX):

In the situation when there is no projected revenue:

$$FA2 = \text{If } (NR > -(BFBB-BFTB)), FX, FX+NR+(BFBB-BFTB)$$

$$= \$6,130,934(NR) \text{ is greater than } (\$21,464,066) \text{ then:}$$

$$= \$17,263,215.90 (FX)$$

If the Net Revenue (loss) value does not result in a loss that exceeds the allowable decrease value of the Basin Fund Beginning Balance  $(-(BFBB-BFTB))$ , then  $FA2=FX$ .

If the Net Revenue (loss) results in a loss that exceeds the allowable decrease value of the Basin Fund Beginning Balance  $(-(BFBB-BFTB))$ , then  $FX + NR + (BFBB-BFTB)$ .

**FA** – Determine the funds available for purchasing firming energy by using the lesser of FA1 and FA2.

FA1 and FA2 are equal, so:

$$FA = \$17,263,215.90 (FX)$$

**FARR** – Calculate the additional revenue to be recovered by subtracting the Funds Available from the forecasted energy purchase power expenses.

$$FARR = FX-FA$$

$$= \$17,263,215.90 (FX) - \$17,263,215.90 (FA)$$

$$= \$ 0.00$$

**STEP FOUR:** Once the funds available for purchases have been determined, the CRC can be calculated and the Waiver Level (WL) can be determined.

A. Cost Recovery Charge: The CRC will be a charge to recover the additional revenue required as calculated in Step 3. The CRC will apply to all customers who choose not to request a

waiver of the CRC, as discussed below. The CRC equals the additional revenue to be recovered divided by the total energy allocation to all customers for the FY.

$$\text{CRC} = \text{FARR} / (\text{EA} * 1,000)$$

$$= \$ 0.00 \text{ charge}$$

- B. Waiver Level (WL): Western will establish an energy WL that provides Western the ability to reduce purchase power expenses by scheduling less energy than what is contractually required. Therefore, for those customers who voluntarily schedule no more energy than their proportionate share of the WL, Western will waive the CRC for that year.

After the Funds Available has been determined, the WL will be set at the sum of the energy that can be provided through hydro generation and purchased with Funds Available. The WL will not be less than the forecasted Hydro Energy.

$$\text{WL} = \text{If} (\text{EA} < \text{HE}, \text{EA}, \text{HE} + (\text{FE} * (\text{FA} / \text{FX}))$$

$$= 4,952 \text{ (EA) is not less than } 4,924 \text{ (HE) then:}$$

$$= 4,924 \text{ (HE)} + (504.33 \text{ (FE)} * (\$17,263,215.90 \text{ (FA)} / \$17,263,215.90 \text{ (FX)})$$

$$= 5,428 \text{ (GWh) is the Waiver Level}$$

If SHP Energy Allocation is less than forecasted Hydro Energy available, then **WL=EA**

If SHP Energy Allocation is greater than the forecasted Hydro Energy available, then

$$\text{WL} = \text{HE} + (\text{FE} * (\text{FA} / \text{FX}))$$

## PRIOR YEAR ADJUSTMENT:

The CRC PYA for subsequent years will be determined by comparing the prior year's estimated firming-energy cost to the prior year's actual firming-energy cost for the energy provided above the WL. The PYA will result in an increase or decrease to a customer's firm energy costs over the course of the following year. The table below is the calculation of a PYA.

PYA CALCULATION			
		Description	Formula
<b>STEP ONE</b>	<b>Determine actual expenses and purchases for previous year's firming. This data will be obtained from Western's financial statements at the end of the FY.</b>		
	<b>PFX</b>	Prior Year Actual Firming Expenses (\$)	Financial Statements
	<b>PFE</b>	Prior Year Actual Firming Energy (GWh)	Financial Statements
<b>STEP TWO</b>	<b>Determine the actual firming cost for the CRC portion.</b>		
	<b>EAC</b>	Sum of the energy allocations of customers subject to the PYA (GWh)	
	<b>FFC</b>	Forecasted Firming Energy Cost - (\$/MWh)	From CRC Calculation
	<b>AFC</b>	Actual Firming Energy Cost - (\$/MWh)	PFX/PFE
	<b>CRCEP</b>	CRC Energy Percentage	From CRC Calculation
	<b>CRCE</b>	Purchased Energy for the CRC (GWh)	EAC*CRCEP
<b>STEP THREE</b>	<b>Determine Revenue Adjustment (RA) and PYA.</b>		
	<b>RA</b>	Revenue Adjustment (\$)	(AFC-FFC)*CRCE*1,000
	<b>PYA</b>	Prior Year Adjustment (mills/kWh)	(RA/EAC)/1,000

Narrative PYA Calculation

**STEP ONE:** Determine actual expenses and purchases for previous year's firming. This data will be obtained from Western's financial statements at end of FY.

**PFX** - Prior year actual firming expense

**PFE** - Prior year actual firming energy

**STEP TWO:** Determine the actual firming cost for the CRC portion.

**EAC** - Sum of the energy allocations of customers subject to the PYA

**CRCE** - The amount of CRC Energy needed

**AFC** - The Actual Firming Energy Cost are the PFX divided by the PFE

$$\text{AFC} = (\text{PFX}/\text{PFE})/1,000$$

**STEP THREE: Determine Revenue Adjustment (RA) and Prior Year Adjustment (PYA).**

**RA** - The Revenue Adjustment is AFC less FFC times CRCE

$$\text{RA} = (\text{AFC}-\text{FFC}) * \text{CRCE} * 1,000$$

**PYA** = The PYA is the RA divided by the EAC for the CRC customers only.

$$\text{PYA} = (\text{RA}/\text{EAC})/1,000$$

The customer's PYA will be based on its prior year's energy multiplied by the resulting mills/kWh to determine the dollar amount that will be assessed. The customers will be charged or credited for this dollar amount equally in the remaining months of the next year's billing cycle. Western will attempt to complete this calculation by December of each year. Therefore, if the PYA is calculated in December, the charge/credit will be spread over the remaining 9 months of the FY (January through September).

**Shortage Criteria Trigger:**

In the event that Reclamation's 24-month study projects that Glen Canyon Dam water releases will drop below 8.23 MAF in a water year (October through September), Western will recalculate the CRC to include those lower estimates of hydropower generation and the estimated costs for the additional purchase power necessary. Western, as in the yearly projection for the CRC, will give the customers a 45-day notice to request a waiver of the CRC, if they do not want to have the CRC charge added to their energy bill. This recalculation will remain in effect for the remainder of the current FY.

In the event that hydropower generation returns to an 8.23 MAF or higher during the trigger implementation, a new CRC will be calculated for the next month, and the customers will be notified.

### CRC Schedule for customers

Consistent with the procedures at 10 CFR 903, Western will provide its customers with information concerning the anticipated CRC for the upcoming FY in May. The established CRC will be in effect for the entire FY. The table below displays the time frame for determining the amount of purchases needed, developing customers' load schedules, and making purchases.

#### **CRC Schedule**

<b>Task</b>	<b>Respective Dates Under Table CRC Tiers<sup>1</sup></b>		
	<b>i, ii, and iii</b>	<b>iv<sup>2</sup></b>	<b>v<sup>3</sup></b>
<b>24-Month Study (Forecast to Model Projections)</b>	April 1	April 1 October 1	Monthly Study
<b>CRC Notice to Customers</b>	May 1	May 1 November 1	Monthly
<b>Waiver Request Submitted by Customers</b>	June 15	Within 45 days	Within 30 days
<b>CRC Effective</b>	October 1	August 1 February 1	Updated Monthly

Notes:

<sup>1</sup> This schedule does not apply if the CRC is triggered by the Glen Canyon Dam annual releases dropping below 8.23 MAF.

<sup>2</sup> If it is determined during the additional reviews, under tier iv, that a CRC is necessary, customers will be notified that a CRC will be implemented in 90 days. Western will provide its customers with information concerning the anticipated CRC and give them 45 days to request a waiver or accept the CRC. The established CRC will be in effect for 12 months from the date implemented unless superseded by another CRC.

<sup>3</sup> If it is determined during the additional reviews, under tier v, that a CRC is necessary, customers will be notified that a CRC will be implemented in 60 days. Western will provide its customers with information concerning the anticipated CRC and give them 30 days to request a waiver or accept the CRC. The established CRC will be in effect for 12 months from the date implemented unless superseded by another CRC.

Billing Demand:

The billing demand will be the greater of:

1. The highest 30-minute integrated demand measured during the month up to, but not more than, the delivery obligation under the power sales contract, or
2. The Contract Rate of Delivery.

Billing Energy:

The billing energy will be the energy measured during the month up to, but not more than, the delivery obligation under the power sales contract.

Adjustment for Waiver:

Customers can choose not to take the full SHP energy supplied as determined in the attached formulas for CRC and will be billed the Energy and Capacity rates listed above, but not the CRC.

Adjustment for Transformer Losses:

If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided in the contract.

Adjustment for Power Factor:

The customer will be required to maintain a power factor at all points of measurement between 95 percent lagging and 95 percent leading.

Adjustment for Western Replacement Power:

Pursuant to the contractor's Firm Electric Service Contract, as amended, Western will bill the contractor for its proportionate share of the costs of Western Replacement Power (WRP) within a given time period. Western will include in the contractor's monthly power bill the cost of the WRP and the incremental administrative costs associated with WRP.

Adjustment for Customer Displacement Power Administrative Charges:

Western will include in the contractor's regular monthly power bill the incremental administrative costs associated with Customer Displacement Power.

WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONS

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\*Legal Citation Revised September 1, 2007

WESTERN AREA POWER ADMINISTRATION  
GENERAL POWER CONTRACT PROVISIONS

I. **APPLICABILITY.**

1. Applicability.

1.1 These General Power Contract Provisions (Provisions) shall be a part of the contract to which they are attached. In the event these Provisions differ from requirements of the contract, specific terms set forth in the contract shall prevail.

1.2 If the Contractor has member utilities which are either directly or indirectly receiving benefits from the contract, then the Contractor shall require such members to comply with Provisions 10, 17, 18, 19, 29, 30, 36, 43, 44, and 45 of these General Power Contract Provisions.

II. **DELIVERY OF SERVICE PROVISIONS.**

2. Character of Service.

Electric energy supplied or transmitted under the contract will be three-phase, alternating current, at a nominal frequency of sixty (60) hertz (cycles per second).

3. Use of Capacity or Energy in Excess of Contract Obligation.

The Contractor is not entitled to use Federal power, energy, or capacity in amounts greater than the Western contract delivery obligation in effect for each type of service provided for in the contract except with the approval of Western. Unauthorized overruns of contract delivery obligations shall be subject to charges specified in the contract or the applicable rate schedules. Overruns shall not establish any continuing right thereto and the Contractor shall cease any overruns when requested by Western, or in the case of authorized overruns, when the approval expires, whichever occurs first. Nothing in the contract shall obligate Western to increase any delivery obligation. If additional power, energy, or capacity is not available from Western, the responsibility for securing additional power, energy, or capacity shall rest wholly with the Contractor.

4. Continuity of Service.

Electric service will be supplied or transmitted continuously except for: (1) fluctuations, interruptions, or reductions due to uncontrollable forces, as defined in Provision 34 (Uncontrollable Forces) herein, (2) fluctuations, interruptions, or reductions due to operation of devices installed for power system protection; and (3) temporary fluctuations, interruptions, or reductions, which, in the opinion of the party supplying the service, are necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection. The party supplying service, except in case of emergency, will give the party to whom service is being provided reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

5. Multiple Points of Delivery.

When electric service is supplied at or transmitted to two or more points of delivery under the same rate schedule, said rate schedule shall apply separately to the service supplied at or transmitted to each point of delivery; Provided, That where the meter readings are considered separately, and during abnormal conditions, the Contractor's system is interconnected between points of delivery such that duplication of metered power is possible, the meter readings at each affected point of delivery will be adjusted to compensate for duplication of power demand recorded by meters at alternate points of delivery due to abnormal conditions which are beyond the Contractor's control or temporary conditions caused by scheduled outages.

6. Metering.

6.1 The total electric power and energy supplied or transmitted under the contract will be measured by metering equipment to be furnished and maintained by Western, a designated representative of Western, or where situations deem it appropriate as determined by Western, by the Contractor or its agent(s). In the event metering equipment is furnished and maintained by the Contractor or its agent(s) and the equipment is used for billing and other accounting purposes by Western, the Contractor shall ensure that the metering equipment complies with applicable metering policies established by Western.

6.2 Meters shall be secured by appropriate security measures and meters shall not be accessed except when the meters are to be inspected, tested, adjusted, or repaired. Representatives of affected parties shall be afforded reasonable opportunity to be present upon such occasions. Metering equipment shall be inspected and tested each year by the party responsible for meter maintenance, unless a different test interval is determined in accordance with good utility practices by an applicable regional metering policy, or as agreed upon by the parties. Meters shall also be tested at any reasonable time upon request by a party hereto, or by an affected supplemental power supplier, transmission agent, or control area operator. Any metering equipment found to be damaged, defective, or inaccurate shall be repaired and readjusted or replaced by the party responsible for meter maintenance as soon as practicable. Meters found with security breaches shall be tested for tampering and, if appropriate, meter readings shall be adjusted by Western pursuant to Provision 6.3 below.

6.3 Except as otherwise provided in Provision 6.4 hereof, should any meter that is used by Western for billing or other accounting purposes fail to register accurately, the electric power and energy supplied or transmitted during the period of failure to register accurately, shall, for billing purposes, be estimated by Western from the best available information.

6.4 If inspections and tests of a meter used by Western for billing or other accounting purposes disclose an error exceeding 2 percent, or a lesser range in error as agreed upon by the parties, then a correction based upon the inaccuracy found shall be made to the service records for the period of inaccuracy as determined by Western. If the period of inaccuracy cannot be determined, the inaccuracy shall be assumed to have existed during the entire monthly billing period immediately preceding the billing period in which the inspection or test was made and the resulting correction shall be made accordingly.

6.5 Any correction in billing or other accounting information that results from a correction in meter records shall be made in a subsequent monthly bill rendered by Western to the Contractor. Payment of such bill shall constitute full adjustment of any claim between the parties arising out of inaccurate metering equipment.

7. Existence of Transmission Service Contract.

If the contract provides for Western to furnish services using the facilities of a third party, the obligation of Western shall be subject to and contingent upon the existence of a transmission service contract granting Western rights to use such facilities. If Western acquires or constructs facilities which would enable it to furnish direct service to the Contractor, Western, at its option, may furnish service over its own facilities.

8. Conditions of Transmission Service.

8.1 When the electric service under the contract is furnished by Western over the facilities of others by virtue of a transmission service arrangement, the power and energy will be furnished at the voltage available and under the conditions which exist from time to time on the transmission system over which the service is supplied.

8.2 Unless otherwise provided in the contract or applicable rate schedule, the Contractor shall maintain a power factor at each point of delivery from Western's transmission agent as required by the transmission agent.

8.3 Western will endeavor to inform the Contractor from time to time of any changes planned or proposed on the system over which the service is supplied, but the costs of any changes made necessary in the Contractor's system, because of changes or conditions on the system over which the service is supplied, shall not be a charge against or a liability of Western.

8.4 If the Contractor, because of changes or conditions on the system over which service under the contract is supplied, is required to make changes on its system at its own expense in order to continue receiving service under the contract, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to making such changes, but not thereafter.

8.5 If Western notifies the Contractor that electric service provided for under the contract cannot be delivered to the Contractor because of an insufficiency of capacity available to Western in the facilities of others over which service under the contract is supplied, then the Contractor may terminate service under the contract upon not less than sixty (60) days written notice given to Western prior to the date on which said capacity ceases to be available to Western, but not thereafter.

9. Multiple Points of Delivery Involving Direct and Indirect Deliveries.

When Western has provided line and substation capacity under the contract for the purpose of delivering electric service directly to the Contractor at specified direct points of delivery and also has agreed to absorb transmission service allowance or discounts for deliveries of energy over other system(s) to indirect points of delivery and the Contractor shifts any of its load served under the contract from direct delivery to indirect delivery, Western will not absorb the transmission service costs on such shifted load until the unused capacity, as determined solely by Western, available at the direct delivery points affected is fully utilized.

10. Construction, Operation, and Maintenance of Contractor's Power System.

The Contractor shall, and, if applicable, shall require each of its members or transmission agents to construct, operate, and maintain its power system in a manner which, as determined by Western, will not interfere with the operation of the system of Western or its transmission agents over which electric services are furnished to the Contractor under the contract, and in a manner which will coordinate with the protective relaying and other protective arrangements of the system(s) of Western or Western's transmission agents. Western may reduce or

discontinue furnishing services to the Contractor if, after notice by Western, the Contractor fails or refuses to make such changes as may be necessary to eliminate an unsatisfactory condition on the Contractor's power system which is determined by Western to interfere significantly under current or probable conditions with any service supplied from the power system of Western or from the power system of a transmission agent of Western. Such a reduction or discontinuance of service will not relieve the Contractor of liability for any minimum charges provided for in the contract during the time said services are reduced or discontinued. Nothing in this Provision shall be construed to render Western liable in any manner for any claims, demands, costs, losses, causes of action, damages, or liability of any kind or nature arising out of or resulting from the construction, operation, or maintenance of the Contractor's power system.

### III. RATES, BILLING, AND PAYMENT PROVISIONS.

#### 11. Change of Rates.

Rates applicable under the contract shall be subject to change by Western in accordance with appropriate rate adjustment procedures. If at any time the United States promulgates a rate changing a rate then in effect under the contract, it will promptly notify the Contractor thereof. Rates shall become effective as to the contract as of the effective date of such rate. The Contractor, by written notice to Western within ninety (90) days after the effective date of a rate change, may elect to terminate the service billed by Western under the new rate. Said termination shall be effective on the last day of the billing period requested by the Contractor not later than two (2) years after the effective date of the new rate. Service provided by Western shall be paid for at the new rate regardless of whether the Contractor exercises the option to terminate service.

#### 12. Minimum Seasonal or Annual Capacity Charge.

When the rate in effect under the contract provides for a minimum seasonal or annual capacity charge, a statement of the minimum capacity charge due, if any, shall be included in the bill rendered for service for the last billing period of the service season or contract year as appropriate, adjusted for increases or decreases in the contract rate of delivery and for the number of billing periods during the year or season in which service is not provided. Where multiple points of delivery are involved and the contract rate of delivery is stated to be a maximum aggregate rate of delivery for all points, in determining the minimum seasonal or annual capacity charge due, if any, the monthly capacity charges at the individual points of delivery shall be added together.

#### 13. Billing and Payment.

13.1 Western will normally issue bills to the Contractor for services furnished during the preceding month within ten (10) days after the end of the billing period.

13.2 If Western is unable to issue timely monthly bill(s), Western may elect to render estimated bill(s). Such estimated bill(s) shall be subject to the same payment provisions as final bill(s), and any applicable adjustments will be shown on a subsequent monthly bill.

13.3 Payments of bills issued by Western are due and payable by the Contractor before the close of business on the twentieth (20th) calendar day after the date of issuance of each bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday. Bills shall be considered paid when payment is received by Western. Bills will be paid electronically or via the Automated Clearing House method of payment unless a written request to make payments by mail is submitted by the Contractor and approved by Western. Should Western agree to accept payments by mail, these payments will be accepted as timely and without assessment of the charge provided for in Provision 14 (Nonpayment of Bills in Full When Due) if a United States

Post Office first class mail postmark indicates the payment was mailed at least three (3) calendar days before the due date.

13.4 The parties agree that net billing procedures will be used for payments due Western by the Contractor and for payments due the Contractor by Western for the sale or exchange of electric power and energy, use of transmission facilities, operation and maintenance of electric facilities, and other services. Payments due one party in any month shall be offset against payments due the other party in such month, and the resulting net balance shall be paid to the party in whose favor such balance exists. The parties shall exchange such reports and information that either party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

14. Nonpayment of Bills in Full When Due.

14.1 Bills not paid in full by the Contractor by the due date specified in Provision 13 (Billing and Payment) hereof shall bear a charge of five hundredths percent (0.05%) of the principal sum unpaid for each day payment is delinquent, to be added until the amount due is paid in full. Western will also assess a fee of twenty-five dollars (\$25.00) for processing a late payment. Payments received will first be applied to the charges for late payment assessed on the principal and then to payment of the principal.

14.2 Western shall have the right, upon not less than fifteen (15) days advance written notice, to discontinue furnishing the services specified in the contract for nonpayment of bills in full when due, and to refuse to resume such services so long as any part of the amount due remains unpaid. Such a discontinuance of service will not relieve the Contractor of liability for minimum charges during the time service is so discontinued. The rights reserved to Western herein shall be in addition to all other remedies available to Western either by law or in equity, for the breach of any of the terms hereof.

15. Adjustments for Fractional Billing Period.

The demand or capacity charge and minimum charges shall each be proportionately adjusted when fractional billing periods are applicable under this contract. A fractional billing period can occur: 1) at the beginning or end of electric service; 2) at the beginning or end of irrigation pumping service each year; 3) for a fractional billing period under a new rate schedule; or 4) for fractional periods due to withdrawals of electric services. The adjustment will be made based on the ratio of the number of hours that electric service is available to the Contractor in such fractional billing period, to the total number of hours in the billing period involved. Energy billing shall not be affected by fractional billing periods.

16. Adjustments for Curtailments to Firm Service.

16.1 Billing adjustments will be made if firm electric service is interrupted or reduced because of conditions on the power system of the United States for periods of one (1) hour or longer in duration each. Billing adjustments will not be made when such curtailment of electric service is due to a request by the Contractor or a discontinuance of electric service by Western pursuant to Provision 14 (Nonpayment of Bills In Full When Due). For purposes of billing adjustments under this Provision, the term power system of the United States shall include transmission facilities used under contract but not owned by the United States.

16.2 The total number of hours of curtailed firm electric service in any billing period shall be determined by adding: (1) the sum of the number of hours of interrupted electric service to (2) the product, of each reduction, of: the number of hours reduced electric service and the percentage by which electric service was reduced below the delivery obligation of Western at the time of each said reduction of electric service. The demand or capacity charge and applicable minimum charges shall each be proportionately adjusted in the ratio that

the total number of hours of electric service determined to have been curtailed bears to the total number of hours in the billing period involved.

16.3 The Contractor shall make written claim within thirty (30) days after receiving the monthly bill, for adjustment on account of any curtailment of firm electric service, for periods of one (1) hour or longer in duration each, alleged to have occurred that is not reflected in said bill. Failure to make such written claim, within said thirty-day (30-day) period, shall constitute a waiver of said claim. All curtailments of electric service, which are due to conditions on the power system of the United States, shall be subject to the terms of this Provision; Provided, That withdrawal of power and energy under the contract shall not be considered a curtailment of electric service.

#### IV. POWER SALES PROVISIONS.

##### 17. Resale of Firm Electric Service (Wholesale Sales for Resale).

The Contractor shall not sell any firm electric power or energy supplied under the contract to any electric utility customer of the Contractor for resale by that utility customer; Provided, That the Contractor may sell the electric power and energy supplied under the contract to its members on condition that said members not sell any of said power and energy to any customer of the member for resale by that customer.

##### 18. Distribution Principles.

The Contractor agrees that the benefits of firm electric power or energy supplied under the contract shall be made available to its consumers at rates that are established at the lowest possible level consistent with sound business principles, and that these rates will be established in an open and public manner. The Contractor further agrees that it will identify the costs of firm electric power or energy supplied under the contract and power from other sources to its consumers upon request. The Contractor will demonstrate compliance with the requirements of this Provision to Western upon request.

##### 19. Contract Subject to Colorado River Compact.

Where the energy sold under the contract is generated from waters of the Colorado River system, the contract is made upon the express condition and with the express covenant that all rights under the contract shall be subject to and controlled by the Colorado River Compact approved by Section 13 (a) of the Boulder Canyon Project Act of December 21, 1928, 43 U.S.C. §§ 617a-e, and the parties to the contract shall observe and be subject to and controlled by said Colorado River Compact in the construction, management, and operation of the dams, reservoirs, and powerplants from which electrical energy is to be furnished by Western to the Contractor under the contract, and in the storage, diversion, delivery, and use of water for the generation of electrical energy to be delivered by Western to the Contractor under the contract.

#### V. FACILITIES PROVISIONS.

##### 20. Design Approval.

All facilities, construction, and installation by the Contractor pursuant to the contract shall be subject to the approval of Western. Facilities interconnections shall normally conform to Western's current "General Requirements for Interconnection," in effect upon the signing of the contract document providing for each interconnection, copies of which are available from Western. At least ninety (90) days, unless otherwise agreed,

system, and said changes or additions are entirely or partially required because of the Contractor's equipment installed under the contract, such changes or additions shall, after consultation with the Contractor, be made by Western with all costs or a proportionate share of all costs, as determined by Western, to be paid by the Contractor. Western shall notify the Contractor in writing of the necessary changes or additions and the estimated costs to be paid by the Contractor. If the Contractor fails to pay its share of said estimated costs, Western shall have the right, after giving sixty (60) days' written notice to the Contractor, to terminate the applicable facility installation provisions to the contract and require the removal of the Contractor's facilities.

26. Modification of Western Facilities.

Western reserves the right, at any time, to modify its facilities. Western shall keep the Contractor informed of all planned modifications to Western facilities which impact the facilities installation pursuant to the contract. Western shall permit the Contractor to change or modify its facilities, in a manner satisfactory to and at no cost or expense to Western, to retain the facilities interconnection pursuant to the contract. At the Contractor's option, Western shall cooperate with the Contractor in planning alternate arrangements for service which shall be implemented at no cost or expense to Western. The Contractor and Western shall modify the contract, as necessary, to conform to the new facilities arrangements.

27. Transmission Rights.

If the contract involves an installation which sectionalizes a Western transmission line, the Contractor hereby agrees to provide a transmission path to Western across such sectionalizing facilities at no cost or expense to Western. Said transmission path shall be at least equal, in terms of capacity and reliability, to the path in the Western transmission line prior to the installation pursuant to the contract.

28. Construction and Safety Procedures.

28.1 The Contractor hereby acknowledges that it is aware of the hazards inherent in high-voltage electric lines and substations, and hereby assumes full responsibility at all times for the adoption and use of necessary safety measures required to prevent accidental harm to personnel engaged in the construction, inspection, testing, operation, maintenance, replacement, or removal activities of the Contractor pursuant to the contract. The Contractor and the authorized employees, agents, and subcontractors of the Contractor shall comply with all applicable safety laws and building and construction codes, including the provisions of Chapter 1 of the Power System Operations Manual, entitled Power System Switching Procedure, and the Occupational Safety and Health Administration regulations, Title 29 C.F.R. §§ 1910 and 1926, as amended or supplemented. In addition to the safety program required herein, upon request of the United States, the Contractor shall provide sufficient information to demonstrate that the Contractor's safety program is satisfactory to the United States.

28.2 The Contractor and its authorized employees, agents, and subcontractors shall familiarize themselves with the location and character of all the transmission facilities of Western and interconnections of others relating to the work performed by the Contractor under the contract. Prior to starting any construction, installation, or removal work, the Contractor shall submit a plan of procedure to Western which shall indicate the sequence and method of performing the work in a safe manner. No work shall be performed by the Contractor, its employees, agents, or subcontractors until written authorization to proceed is obtained from Western.

28.3 At all times when the Contractor, its employees, agents, or subcontractors are performing activities of any type pursuant to the contract, such activities shall be under supervision of a qualified employee, agent, or subcontractor of the Contractor who shall be authorized to represent the Contractor in all matters pertaining to the activity being performed. The Contractor and Western will keep each other informed of the names of their designated representatives at the site.

prior to the date the Contractor proposes to commence construction or to incur an obligation to purchase facilities to be installed pursuant to the contract, whichever date is the earlier, the Contractor shall submit, for the approval of Western, detailed designs, drawings, and specifications of the facilities the Contractor proposes to purchase, construct, and install. The Contractor assumes all risks for construction commenced or obligations to purchase facilities incurred prior to receipt of approval from Western. Western review and approval of designs and construction work in no way implies that Western is certifying that the designs meet the Contractor's needs.

21. Inspection and Acceptance.

Western shall have the right to inspect the materials and work furnished by the Contractor, its agents, employees, and subcontractors pursuant to the contract. Such inspections shall be at reasonable times at the work site. Any materials or work that Western determines is defective or not in accordance with designs, drawings, and specifications, as approved by Western, shall be replaced or modified, as directed by Western, at the sole expense of the Contractor before the new facilities are energized.

22. As-Built Drawings.

Within a reasonable time, as determined by Western, after the completion of construction and installation of facilities pursuant to the contract, the Contractor shall submit to Western marked as-built prints of all Western drawings affected by changes made pursuant to the contract and reproducible drawings the Contractor has prepared showing facilities of Western. The Contractor's drawings of Western facilities shall use drawing title blocks, drawing numbers, and shall be prepared in accordance with drafting standards all as approved by Western. Western may prepare, revise, or complete said drawings and bill the Contractor if the Contractor fails to provide such drawings to Western within a reasonable time as determined by Western.

23. Equipment Ownership Markers.

23.1 The Contractor shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the United States right-of-way or in Western substations pursuant to the contract which are owned by the Contractor, by permanently affixing thereto suitable markers clearly identifying the Contractor as the owner of said equipment and facilities.

23.2 If requested by the Contractor, Western shall identify all movable equipment and, to the extent agreed upon by the parties, all other salvageable facilities constructed or installed on the Contractor's right-of-way or in the Contractor's substations pursuant to the contract which are owned by the United States, by permanently affixing thereto suitable markers clearly identifying the United States as the owner of said equipment and facilities.

24. Third-Party Use of Facilities.

The Contractor shall notify Western of any proposed system change relating to the facilities governed by the contract or allowing third-party use of the facilities governed by the contract. If Western notifies the Contractor that said system change will, as solely determined by Western, adversely affect the operation of Western's system the Contractor shall, at no cost to Western, provide a solution to said adverse effect acceptable to Western.

25. Changes to Western Control Facilities.

If at any time during the term of the contract, Western determines that changes or additions to control, relay, or communications facilities are necessary to maintain the reliability or control of Western's transmission

28.4 Upon completion of its work, the Contractor shall remove from the vicinity of the right-of-way of the United States all buildings, rubbish, used materials, concrete forms, and other like material belonging to the Contractor or used under the Contractor's direction, and in the event of failure to do so the same may be removed by Western at the expense of the Contractor.

28.5 In the event the Contractor, its employees, agents, or subcontractors fail to comply with any requirement of this Provision, or Provision 21 (Inspection and Acceptance) herein, Western or an authorized representative may issue an order to stop all or any part of the work until such time as the Contractor demonstrates compliance with the provision at issue. The Contractor, its employees, agents, or subcontractors shall make no claim for compensation or damages resulting from such work stoppage.

29. Environmental Compliance.

Facilities installed under the contract by any party shall be constructed, operated, maintained, replaced, transported, and removed subject to compliance with all applicable laws, including but not limited to the National Historic Preservation Act of 1966, 16 U.S.C. §§ 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347, the Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. §§ 470aa-470mm, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations, and executive orders.

30. Responsibility for Regulated Materials.

When either party owns equipment containing regulated material located on the other party's substation, switchyard, right-of-way, or other property, the equipment owner shall be responsible for all activities related to regulated materials in such equipment that are necessary to meet the requirements of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, the Oil Pollution Act of 1990, 33 U.S.C. §§ 2702-2761, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-j26, and the regulations and executive orders implementing these laws, as they may be amended or supplemented, and any other existing or subsequent applicable laws, regulations, and executive orders. Each party shall label its equipment containing regulated material in accordance with appropriate laws and regulations. If the party owning the equipment does not perform activities required under appropriate laws and regulations within the time frame specified therein, the other party may perform or cause to be performed the required activities after notice to and at the sole expense of the party owning the equipment.

VI. **OTHER PROVISIONS.**

31. Authorized Representatives of the Parties.

Each party to the contract, by written notice to the other, shall designate the representative(s) who is (are) authorized to act in its behalf with respect to those matters contained in the contract which are the functions and responsibilities of the authorized representatives of the parties. Each party may change the designation of its authorized representative(s) upon oral notice given to the other, confirmed promptly by written notice.

32. Effect of Section Headings.

Section headings or Provision titles appearing in the contract or these General Power Contract Provisions are inserted for convenience only and shall not be construed as interpretations of text.

33. Operating Guidelines and Procedures.

The parties to the contract may agree upon and put into effect from time to time, such other written guidelines and procedures as may be required in order to establish the methods of operation of the power system to be followed in the performance of the contract.

34. Uncontrollable Forces.

Neither party to the contract shall be considered to be in default in performance of any of its obligations under the contract, except to make payment as specified in Provision 13 (Billing and Payment) herein, when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Either party rendered unable to fulfill any of its obligations under the contract by reason of an uncontrollable force shall give prompt written notice of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

35. Liability.

35.1 The Contractor hereby agrees to indemnify and hold harmless the United States, its employees, agents, or contractors from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the Contractors', its employees', agents', or subcontractors' construction, operation, maintenance, or replacement activities under the contract.

35.2 The United States is liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680, as amended or supplemented.

36. Cooperation of Contracting Parties.

If, in the operation and maintenance of their respective power systems or electrical equipment and the utilization thereof for the purposes of the contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses, such costs to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance. Issuance and payment of bills for services provided by Western shall be in accordance with Provisions 13 (Billing

and Payment) and 14 (Nonpayment of Bills in Full When Due) herein. Western shall pay bills issued by the Contractor for services provided as soon as the necessary vouchers can be prepared which shall normally be within twenty (20) days.

37. Transfer of Interest in Contract or Change in Preference Status.

37.1 No voluntary transfer of the contract or of the rights of the Contractor under the contract shall be made without the prior written approval of the Administrator of Western. Any voluntary transfer of the contract or of the rights of the Contractor under the contract made without the prior written approval of the Administrator of Western may result in the termination of the contract; Provided, That the written approval of the Administrator shall not be unreasonably withheld; Provided further, That if the Contractor operates a project financed in whole or in part by the Rural Utilities Service, the Contractor may transfer or assign its interest in the contract to the Rural Utilities Service or any other department or agency of the Federal Government without such prior written approval; Provided further, That any successor to or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of the contract to the same extent as though such successor or assignee were the original Contractor under the contract; and, Provided further, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this Provision.

37.2 The Contractor shall maintain its status as an entity eligible for preference in Western's sale of Federal power pursuant to Reclamation law, as amended and supplemented.

37.3 Western shall give the Contractor written notice of Western's proposed determination that the Contractor has violated Provision 37.1 and Western's proposed action in response to the violation.

37.4 The Contractor shall have 120 days after receipt of Western's notice provided under Provision 37.3 to submit a written response to Western. The Contractor may also make an oral presentation to the Administrator during this 120-day period.

37.5 At any time during this process, the Contractor and Western may agree upon corrective action to resolve Western's proposed determination that the Contractor is in violation of Provision 37.1.

37.6 Within 30 days of receipt of the Contractor's written response provided under Provision 37.4, Western will notify the Contractor in writing of its final decision. The Administrator's written notice will include the intended action, the effective date thereof, and the reasons for taking the intended action. Implementation of the Administrator's action shall take place no earlier than 60 days from the Contractor's receipt of such notice.

37.7 Any successor to Western shall be subject to all the provisions and conditions of the contract to the same extent as though such successor were an original signatory to the contract.

37.8 Nothing in this Provision shall preclude any right to judicial review available to the Contractor under Federal law.

38. Choice of Law and Forum.

Federal law shall control the obligations and procedures established by this contract and the performance and enforcement thereof. The forum for litigation arising from this contract shall exclusively be a Federal court of the United States, unless the parties agree to pursue alternative dispute resolution.

39. Waivers.

Any waivers at any time by either party to the contract of its rights with respect to a default or any other matter arising under or in connection with the contract shall not be deemed a waiver with respect to any subsequent default or matter.

40. Notices.

Any notice, demand, or request specifically required by the contract or these Provisions to be in writing shall be considered properly given when delivered in person or sent by postage prepaid registered or certified mail, commercial delivery service, facsimile, electronic, prepaid telegram, or by other means with prior agreement of the parties, to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice. Where facsimile or electronic means are utilized for any communication covered by this Provision, the sending party shall keep a contemporaneous record of such communications and shall verify receipt by the other party.

41. Contingent Upon Appropriations and Authorization.

41.1 Where activities provided for in the contract extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under the contract. In case such appropriation is not made, the Contractor hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

41.2 In order to receive and expend funds advanced from the Contractor necessary for the continued performance of the obligations of the United States under the contract, additional authorization may be required. In case such authorization is not received, the Contractor hereby releases the United States from those contractual obligations and from all liability due to the lack of such authorization.

42. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

43. Contract Work Hours and Safety Standards.

The contract, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

44. Equal Opportunity Employment Practices.

Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

45. Use of Convict Labor.

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.

## CREDITWORTHINESS PROCEDURES FOR WAPA FEDERAL POWER CUSTOMERS

### 1. APPLICABILITY

- a) These Creditworthiness Procedures apply to all WAPA Federal power customers (Customer) who are billed for power. These procedures do not apply to Federal Agencies or Tribes that have entered into a bill or benefit crediting arrangement.
- b) Certain power systems provide WAPA and/or the generating agency with working capital to mitigate risk associated with a non-payment of a bill by a Customer. Sufficient working capital may negate the application of these Creditworthiness Procedures. Working capital deposit requirements will be established on a project by project basis. Working capital deposits do not offset firm power bills.

### 2. EVALUATION OF INFORMATION

- a) Creditworthiness evaluations shall be conducted by WAPA's Chief Financial Officer (CFO) in consultation and coordination with the appropriate Regional Manager or CRSP Management Center Manager.
- b) Customers not in default of their financial commitments to WAPA under an existing contract within the last 12 months of the date of these procedures shall be deemed creditworthy. Customers determined to be creditworthy are not subject to an initial creditworthiness evaluation as set forth in Section 2.c below.
- c) New Customers and existing Customers that have defaulted on their financial commitments to WAPA under an existing contract within the last 12 months of the date of these procedures, shall be subject to a creditworthiness evaluation.

WAPA will evaluate the following criteria when conducting a creditworthiness evaluation:

- i. Is the Customer on WAPA's subscribed rating service watch list, currently at or below "BB" on Standard & Poor's ratings (for example); or
  - ii. Is the Customer currently in bankruptcy proceedings, or, based on objective and reliable financial reporting, expected to seek bankruptcy protection in the near future; or
  - iii. Is the Customer experiencing significant financial hardship or distress that a reasonable examiner of creditworthiness, applying reasonable creditworthiness standards, would find material to decisions concerning credit?
- d) If WAPA determines, based on any of the criteria above, that a Customer's ability to make payments under a Federal power contract is in substantial doubt, the Customer will be deemed non-creditworthy. Upon deeming a Customer non-creditworthy, WAPA will promptly provide written notice of such determination and the basis for its determination to the Customer. Customers may contest WAPA's creditworthiness determination as set forth in Section 3 below.

### 3. CONTESTING CREDITWORTHINESS DETERMINATION

- a) Within five (5) business days of receiving written notice of a non-creditworthiness determination, the Customer may contest WAPA's creditworthiness determination by submitting a written notice to WAPA explaining its reasons for contesting the determination. The notice must include the name of a designated senior representative authorized to represent the Customer. The written notice contesting WAPA's creditworthiness determination shall be referred to WAPA's CFO who will issue a written decision to the designated senior representative of the Customer within three (3) business days of receiving the Customer's notice.
- b) Should the Customer disagree with the CFO's decision, the Customer may appeal the decision by submitting a written notice to WAPA's Administrator within three (3) business days of receiving the CFO's decision. WAPA's Administrator will issue a written decision within three (3) business days of receiving the Customer's notice.
- c) The requirement to provide collateral security shall be stayed during the process of contesting a creditworthiness determination. Any such stay of the requirement to provide collateral security shall expire upon Customer's receipt of the CFO's written decision or, as applicable, the Administrator's written decision upholding a non-creditworthiness determination.

### 4. ADVERSE MATERIAL ISSUE/CHANGE

- a) An adverse material issue or change is an occurrence or event that results in a Customer experiencing significant financial hardship or distress such that a reasonable examiner of creditworthiness, applying reasonable creditworthiness standards, would find material to decisions concerning credit. Examples of an adverse material issue/change that would be reviewed by WAPA include, but are not limited to, a bankruptcy filing, being placed on a credit watch list, and a criminal indictment of a corporation or corporate officers.

WAPA's CFO will initially review the issue/change to determine if a creditworthiness evaluation is necessary. If so, WAPA will apply the criteria set forth in section 2.c to evaluate the impact of the issue/change. If WAPA determines that, based on an adverse material change, a Customer's ability to make payments under a Federal power contract is in substantial doubt, it will determine the Customer non-creditworthy and document the decision. A Customer deemed non-creditworthy will be required to provide collateral in accordance with the Section 5 of these procedures.

- b) The Customer will provide WAPA a notice of adverse material changes in its financial condition (and, as applicable, the financial condition of its guarantor) within ten (10) calendar days from the time the Customer learns of an adverse material change. In addition, WAPA may, through its own efforts, learn of occurrences or events that it may consider an adverse material change.
- c) In the case of a failure by a Customer to report an event or occurrence that results in a Customer experiencing significant financial hardship or distress, but who is otherwise current on its contractual payments, WAPA will consult with the Customer and consider the circumstances surrounding the failure to report before making any decision on creditworthiness.

## 5. COLLATERAL SECURITY

- a) In the event WAPA determines a Customer is non-creditworthy in accordance with Section 2.d., WAPA will notify the Customer in writing of its determination as well as the basis for its determination. The Customer must provide collateral within thirty (30) calendar days of receipt of the initial written notice provided by WAPA under Section 2.d (or as otherwise agreed in writing between the Customer and WAPA's CFO).
- b) The required amount of security will be based on the maximum total estimated service charge for outstanding service provided by WAPA under its Federal power contract, but not yet paid by the Customer, plus an advance of sixty (60) calendar days of estimated service under its Federal power contract as collateral. WAPA shall have the right to liquidate or draw upon all or a portion of the Customer's collateral provided in order to satisfy the Customer's total net obligation to WAPA. The Customer shall within five (5) business days, or as agreed in writing between WAPA and the Customer, replace any liquidated or drawn-upon collateral. Upon the completion of twelve consecutive months of timely payments under the FES contract, WAPA shall credit the Customer the advanced collateral. If a Customer provides collateral consisting of advance payments for service, WAPA will not collect nor credit interest on such collateral.
- c) Acceptable collateral includes:
  - Payment in advance for service; or
  - An unconditional and irrevocable standby letter of credit as security to meet the Customer's responsibilities and obligations. If this form of collateral is used, it will comply with the requirements as stated in the Uniform Customs and Practice for Documentary Credits; or
  - An irrevocable and unconditional corporate guaranty from an entity that satisfies the creditworthiness requirements.

## 6. SUSPENSION OF SERVICE

- a) If a Customer fails to provide collateral as set forth above, WAPA may suspend electric service to the Customer no sooner than fifteen (15) business days after WAPA notifies the Customer of the suspension of electric service. The suspension of service shall continue until the Customer provides collateral.
- b) Such a suspension of service will not relieve the Customer of liability for minimum charges, if applicable, during the time service is so suspended.
- c) The rights reserved to WAPA herein shall be in addition to all other remedies available to WAPA, either by law or in equity, for the breach of any of the terms hereof.

## 7. NOTICE REQUIREMENTS

Any notice, demand, or request specifically required by these Creditworthiness Provisions to be in writing shall be considered properly given when delivered in person or sent by postage prepaid registered or certified mail, commercial delivery service, facsimile, electronic, prepaid telegram, or by other means with prior agreement of the parties, to each party's authorized representative at the principal offices of the party. The designation of the person to be notified may be changed at any time by similar notice. Where facsimile or electronic means are utilized for any communication covered by this Provision, the sending party shall keep a contemporaneous record of such communications and shall verify receipt by the other party.

ATTACHMENT I

In accordance with Section 7, the Western Area Power Administration (WAPA) will notify the Contractor of estimated changes in the contractor's AHP due to SLCA Integrated Projects hydroelectric generation capability and the estimated costs of purchases of Western Replacement Power. Such authorization will be given to the Contractor in approximately the following form:

Contractor Name:  
 Season:

Available Hydro Power and Estimated Cost for Western Replacement Power

In accordance with Section 7.2.1 of the Contract, WAPA has reviewed the capacity it will have available from the SLCA Integrated Projects for the upcoming season.

Table No. 1

Month	AHP (kW)	Estimated Cost For WRP (\$)	Monthly Capacity Up To CROD (kW)	WRP Purchase (kW)	WRP Energy Purchase (kWh)	CDP Purchase (kWh)	CDP Energy Purchase (kW)
<b>Total</b>							

Advancement of Funds  
 (Notice if Required)

WAPA has determined that it does not have sufficient purchase power funds to purchase Western Replacement Power and that an advance of funds is needed at this time. If the Contractor determines that it wishes WAPA to purchase Western Replacement Power on its behalf, please remit the required advance along with the authorization of the amount of Western Replacement Power purchases requested. The required advance is calculated as follows:

Required Advance (\$) = [Sum of Estimated Cost (\$) from Table No. 1 / Sum of Estimated Replacement Purchases (kWh) from Table No. 1] \* [Western Replacement Power (kWh) requested].

Where: Western Replacement Power requested (kWh) = The maximum sum of Western Replacement Power for any two (2) months

## ATTACHMENT 2

Milestones of Notices and Requests

## SEASONAL WESTERN REPLACEMENT POWER

Contract Article	Notice/Request	No Sooner Than	No Later Than	Duration	Elapsed Time Since Initial Notice
-	Seasonal AHP Analysis and Market Survey by WAPA	Winter: Mar. 1	Winter: May 30	90 days	-
		Summer: Oct. 15	Summer: Jan. 14		
7.2.1	Notice to Contractors (AHP Availability) by WAPA	-	Winter: Jun. 1	-	-
			Summer: Jan. 15		
-	Individual Contractor Analysis	Winter: Jun. 1	Winter: Jun. 30	30 days	1 month <sup>1</sup>
		Summer: Jan. 16	Summer: Jan. 31	15 days	0.5 month <sup>1</sup>
7.2.2	Contractor Written Notice of Need and Authority to Purchase	-	Winter: Jul. 1	-	-
			Summer: Feb. 1*		
-	WAPA Aggregates Contractor Need by Period	Winter: Jun. 1	Winter: Jul. 15	15 days	0.5 month <sup>2</sup>
		Summer: Jan. 16	Summer: Feb. 15		0.5 month <sup>2</sup>
7.2.3	Seasonal WRP Acquisition by WAPA (if required)	-	Winter: Jul. 1	90 days	3 months <sup>2</sup>
			Summer: Feb. 1		Summer: Apr. 1
7.2.3	"Problem" Notice to Contractors (if required)	-	Winter: Sep. 1	-	2 months <sup>2</sup>
			Summer: Mar. 1		1 month <sup>2</sup>
7.2.4	"Revised Cost" Notice to Contractors (if required)	-	Winter: Oct. 1	-	3 months <sup>2</sup>
			Summer: Apr. 1		2 months <sup>2</sup>

\* February 1, or 15 calendar-days following the Notice to Contractor, whichever is later.

<sup>1</sup> Measure from "Contractors (AHP Availability) by WAPA." Example: Jan. 31 is 0.5 month from Jan. 15.

<sup>2</sup> Measure from "Contractor Written Notice of Need and Authority to Purchase." Example: Oct. 1 is 4 months from Jul. 1.

## ATTACHMENT 3

Timeline of Notices and Requests

## LONG TERM WESTERN REPLACEMENT POWER

Contract Article	Notice/Request	No Sooner Than	No Later Than	Duration	Elapsed Time Since Initial Notice
-	Multi-year AHP Analysis	Jun. 1	Sep. 1	90 days	-
7.3.1	Notice of AHP Availability to Contractors	-	Sep. 1	-	-
7.3.2	Contractor Response (Amount and Timing) to WAPA	Sep. 1	Nov. 1	60 days	2 months <sup>3</sup>
7.3.3	RFP issued by WAPA	-	Dec. 1	-	3 months <sup>3</sup>
-	Analysis of Supplier Proposals by WAPA; Shot-listing	Dec. 1	Mar. 1	90 days	6 months <sup>3</sup>
7.3.4	Notice of Purchase Terms & Conditions to Contractors	-	Apr. 1	-	7 months <sup>3</sup>
7.3.5	Contractor Written Authorization (Commitment) to Purchase to WAPA	-	May 1	-	8 months <sup>3</sup>
7.3.6	WAPA Negotiates Long Term WRP Contracts with Potential Suppliers	May 1	Sep. 1	-	12 months <sup>3</sup>

<sup>3</sup> Measure from "Notice of AHP Availability to Contractors." Example: Nov. 1 is 2 months from Sep. 1.

## ATTACHMENT 4

Milestones of Notices and Requests

## CUSTOMER DISPLACEMENT POWER

Contract Article	Notice/Request	No Sooner Than	No Later Than	Duration	Elapsed Time Since Initial Notice
-	Seasonal AHP Analysis & Market Survey by WAPA	Winter: Mar. 1	Winter: May 30	90 days	-
		Summer: Oct. 15	Summer: Jan. 14		
7.2.1	Notice to Contractors (AHP Availability) by WAPA	-	Winter: Jun. 1	-	-
			Summer: Jan. 15		
-	Individual Contractor Analysis	Winter: Jun. 1	Winter: Jun. 30	30 days	1 month <sup>4</sup>
		Summer: Jan. 16	Summer: Jan. 31	15 days	0.5 month <sup>4</sup>
7.6.1	Contractor Written Request for CDP	Winter: Mar. 1	Winter: Jul. 1	-	-
		Summer: Oct. 15	Summer: Feb. 1*		
-	WAPA Determines if CDP can be Accepted	Winter: Jul. 1	Winter: Aug. 1	-	-
		Summer: Feb. 1	Summer: Mar. 1		
7.6.2	WAPA Notifies Contractor of Ability to Accept CDP		Winter: Aug. 1	-	1 month <sup>5</sup>
			Summer: Mar. 1		1 month <sup>5</sup>
-	Multi-year AHP Analysis	Jun. 1	Sep. 1	-	-
7.3.1	Notice of AHP Availability to Contractors	-	Sep. 1	-	-
7.6.1	Contractor Written Request for CDP	Sep. 1	Nov. 1	60 days	2 months <sup>6</sup>
7.6.2	WAPA Determines if CDP can be Accepted	-	May 1	-	8 months <sup>6</sup>
7.6.2	WAPA Notifies Contractor of Ability to Accept CDP	May 1	-	-	8 months <sup>6</sup>

\* February 1, or 15 calendar-days following the Notice to Contractor, whichever is later.

<sup>4</sup> Measure from "Notice to Contractors (AHP Availability) by WAPA." Example: Jun. 30 is 1 month from Jun. 1.

<sup>5</sup> Measure from "Contractor Written Request for CDP." Example: Aug. 1 is 1 month from Jul. 1.

<sup>6</sup> Measure from "Notice of AHP Availability to Contractors." Example: Nov. 1 is 2 months from Sep. 1.



## Department of Energy

Western Area Power Administration  
P.O. Box 11606  
Salt Lake City, UT 84147-0606

OCT - 7 1999

RECEIVED OCT 1 1999  
RECEIVED OCT 4 9 1999

Mr. Ken George  
Executive Utility Superintendent  
City of Aztec  
201 West Chaco  
Gallup, NM 87401

Dear Mr. George:

Enclosed is one fully executed original of Amendment No. 5 and Revision No. 4 to Exhibit A of Contract No. 87-SLC-0015 that implements Western Area Power Administration's (Western) decision to apply the Energy Planning and Management Program's Power Marketing Initiative to the Salt Lake City Area Integrated Projects (SLCA/IP).

The Amendment immediately extends the term of the Contract to September 30, 2024, and provides for revising the capacity and energy allocations in the Contract. Following completion of an analysis of the amount of resource available in 2004, Western will provide each customer with an adjusted allocation for the extended contract period. The new allocation will be based on the amount of SLCA/IP resource available for marketing purposes at that time, less 7 percent which will be used to create a power pool for new customers. The new allocations will become effective October 1, 2004.

We appreciate your cooperation and look forward to working together for many more years. If you have any questions, please telephone Brent Osiek at (801) 524-5495.

Sincerely,

Burt Hawkes

Team Lead, Power Marketing and Contracts

Enclosures

AMENDMENT NO. 5

TO

CONTRACT

BETWEEN

CITY OF AZTEC, NEW MEXICO

AND

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION

SALT LAKE CITY AREA INTEGRATED PROJECTS

FOR

FIRM ELECTRIC SERVICE

AMENDMENT NO. 5  
TO  
CONTRACT  
BETWEEN

CITY OF AZTEC, NEW MEXICO

AND

UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
SALT LAKE CITY AREA INTEGRATED PROJECTS  
FOR  
FIRM ELECTRIC SERVICE

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AMENDMENT NO. 5  
TO  
CONTRACT  
BETWEEN

CITY OF AZTEC, NEW MEXICO

AND  
UNITED STATES  
DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
SALT LAKE CITY AREA INTEGRATED PROJECTS  
FOR  
FIRM ELECTRIC SERVICE

1. PREAMBLE

This Contract Amendment (Amendment) is made this 20<sup>th</sup> day of September, 1999, between the UNITED STATES OF AMERICA, Western Area Power Administration (Western), and CITY OF AZTEC, NEW MEXICO (Contractor) as part of Contract No. 87-SLC-0015 as previously amended (Original Contract), pursuant to the same authorities as the Original Contract, and subject to all of the provisions of the Original Contract except as herein amended.

2. EXPLANATORY RECITALS

- 2.1 Western offered and the Contractor executed the Original Contract, which provides among other things, for the sale of long-term firm electric service from the Salt Lake City Area Integrated Projects (SLCA/IP).
- 2.2 Effective November 20, 1995, Western adopted an Energy Planning and Management Program (EPAMP) which consisted of two components: a requirement that all SLCA/IP long-term firm power customers prepare integrated resource plans, and a Power Marketing Initiative (PMI) under which Western

might extend a major portion of Federal resource commitments to its existing long-term firm power customers.

- 2.3 Western did not consider applying the PMI to the SLCA/IP until after completion of the SLCA/IP Electric Power Marketing environmental impact statement (EIS). The Record of Decision on that EIS was issued on November 1, 1996.
- 2.4 Subsequently Western proposed application of the PMI to the SLCA/IP. The public was given opportunities to comment on Western's proposal. Public comment was also invited on how Western should market power, given recent changes in the electric industry, and on how much power should be set aside for new customers, particularly Native American tribes.
- 2.5 On June 25, 1999, in the Federal Register (99 FR 34414), Western announced its decision that the term of its SLCA/IP firm power customers' contractual commitments with Western would be extended until September 30, 2024. On October 1, 2004, most current customers' entitlements to the long-term firm SLCA/IP capacity and energy available at that time would be reduced by 7 percent to provide power for new customers. The purpose of this Contract Amendment is to implement that decision.
- 2.6 Western recognizes that the Bureau of Reclamation (Reclamation) is under a continuing obligation to ensure that the operation of its hydroelectric facilities complies with Federal law. Due to this, Western needs flexibility in its contracts to respond if Reclamation changes the way its facilities are operated.

2.7 Western desires to incorporate the latest General Power Contract Provisions into its SLCA/IP contracts.

3. AGREEMENT

The Parties agree to the terms and conditions set forth herein.

4. TERM OF ORIGINAL CONTRACT AND THIS AMENDMENT

4.1 This Amendment shall become effective when executed by Western and shall remain in effect through September 30, 2024.

4.2 Section 3 of the Original Contract is deleted in its entirety and replaced with the following:

“3. TERM OF CONTRACT

This Contract shall become effective in its entirety on October 1, 1989, and subject to prior termination as otherwise provided for, shall remain in effect until midnight September 30, 2024.”

5. AMENDMENT OF SECTION 5.1 – WESTERN’S ENERGY AND CAPACITY OBLIGATIONS

Section 5.1 of the Original Contract shall remain as written except that Sections 5.1.1, 5.1.2, and 5.1.5 and a new Section 5.1.6 shall be as follows:

“5.1.1 The Seasonal CROD, SHP, AHP, and Monthly Capacity shall be as set forth in Section 3 of Exhibit A.

5.1.2 The Seasonal SHP Energy and Monthly SHP energy shall be as set forth in Section 4 of Exhibit A.

5.1.5 Should Western determine that hydrology projections, operational or other changes, show AHP energy or capacity in sufficient quantities to be made available above that identified as AHP in Exhibit A, Western shall first offer said energy or capacity to its SLCA/IP firm capacity and energy customers. Appropriate written notification from Western will be given to Contractors.

5.1.6 After October 1, 2004, Western may revise the amount of the Contractor's Seasonal SHP Energy or Seasonal CROD as required to respond to changes in hydrology and river operations, upon 5 years' notice to the Contractor."

6. REPLACEMENT OF SECTION 13 - GENERAL POWER CONTRACT PROVISIONS

Section 13 of the Original Contract is deleted in its entirety and replaced with the following:

"13. GENERAL POWER CONTRACT PROVISIONS

13.1. The General Power Contract Provisions (GPCPs) effective July 10, 1998, attached hereto, are hereby made a part of this Agreement the same as if they had been expressly set forth herein, Provided; that Articles 1.2 and 20 through 30 shall not be applicable hereto.

13.2. In addition to the forms of notice specified in Article 39 of the GPCPs dated July 10, 1998, for purposes of complying with the notice requirements of this Contract, either the Contractor or

Western may accomplish such a notice by telecopy or facsimile transmission. Communications related to scheduling provided from and to operating personnel of either Party may be accomplished by electronic mail. Where telecopy, facsimile, or electronic mail are utilized, the sending Party shall keep a contemporaneous record of such communications.”

7. ADDITION OF NEW SECTION 16 - TRANSFER OF INTEREST IN CONTRACT

“16. TRANSFER OF INTEREST IN CONTRACT

Notwithstanding any other provision of this contract to the contrary, Western’s Administrator may adjust Western’s energy or capacity obligations to the Contractor as the Administrator reasonably determines is appropriate if, (1) the Contractor changes its customer status in some manner including merging with another organizational entity, acquiring or being acquired by another organizational entity, creating a new organizational entity from an existing one, joining or withdrawing from a member-based organization, loses its status as a preference entity, or adds or loses members from its membership organization, and (2) the Contractor’s obligation to supply electricity to preference entity loads changes as a result.

8. ORIGINAL AGREEMENT TO REMAIN IN EFFECT

Except as expressly modified herein, the Original Contract shall remain in effect, and this Amendment shall be subject to all the provisions of said Original Contract as expressly modified herein.

IN WITNESS WHEREOF, The Parties have caused this Amendment to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: *Burt Hawks*  
Power Marketing and Contracts Team Lead  
CRSP Customer Service Center  
Western Area Power Administration  
P.O. Box 11606  
Salt Lake City, UT 84147-0606

CONTRACTOR

By: *Mike Arnold*  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

EXHIBIT A

REVISION NO. 4

POINTS OF DELIVERY, VOLTAGES, AND DELIVERY OBLIGATIONS

1. This revised Exhibit A is made this 20th day of September, 1999, to be effective upon execution, under and as part of Contract No. 87-SLC-0015, dated March 13, 1989, hereinafter called the "Contract," terminates and supersedes Exhibit A, Revision No. 3 dated May 8, 1998, and shall remain in effect until superseded by another Exhibit A in accordance with the provisions of the Contract; Provided, That this Exhibit A or any superseding Exhibit A shall be terminated by the expiration of the Contract.
2. Point(s) of Delivery and Voltages: SLCA Integrated Projects (SLCA/IP) firm energy and capacity will be delivered pursuant to the Contract at the point(s) of delivery and voltages listed below.

<u>Point(s) Of Delivery</u>	<u>Nominal Voltage</u>
Shiprock Substation	115-kV

3. Contract Rate of Delivery (CROD), Sustainable Hydro Power (SHP), Available Hydro Power (AHP), and Monthly Capacity:

3.1 SLCA/IP Monthly Capacity, in kilowatts, will be delivered pursuant to the Contract in the quantities listed in the Attachment to Exhibit A, Capacity and Energy Table below. Capacity available to the Contractor from hydro power shall be the greater of SHP or AHP. Total Monthly Capacity shall be the sum of: (1) the greater of SHP or AHP; and (2) WRP and CDP.

3.2 Prior to October 1, 2004, and except as modified by Section 5.1.4 of the Contract, the Seasonal CROD shall be as follows:

Winter Season	2778 kW
Summer Season	2039 kW

3.3 Effective on October 1, 2004, and except as subsequently modified by Sections 5.1.4 and 5.1.6 of the Contract, the Contractor's Seasonal CROD shall be the Contractor's proportional share of 93 percent of the Seasonal CROD available each Winter and Summer Season from October 1, 2004, through September 30, 2024. Prior to October 1, 2004, Western solely will determine the quantities of

marketable CROD available from the SLCA/IP. Western will notify the Contractor, in writing, of the quantities of Seasonal CROD the Contractor will receive each Winter and Summer Season. The written notification delivered to the Contractor will be attached to and become part of the Contract the same as if it had been expressly set forth therein.

4. Seasonal SHP Energy and Monthly SHP Energy

4.1 SLCA/IP firm energy, in kilowatthours will be delivered pursuant to the Contract in the quantities listed in the Attachment to Exhibit A, Monthly Capacity and Energy Table below, at the monthly energy amount applicable to that billing period. Energy may not be transferred from month to month without revision to the attachment to this Exhibit A.

4.2 Prior to October 1, 2004, and except as modified by Section 5.1.4 of the Contract, the Seasonal SHP Energy shall be as follows:

Winter Season	6,082,158 kWh
Summer Season	4,494,653 kWh

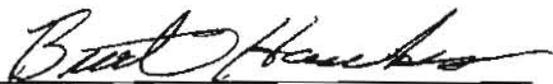
4.3 Effective on October 1, 2004, and except as subsequently modified by Sections 5.1.4 and 5.1.6 of the Contract, the Contractor's Seasonal SHP Energy shall be the Contractor's proportional share of 93 percent of the Seasonal SHP Energy available each Winter and Summer Season from October 1, 2004, through September 30, 2024. Prior to October 1, 2004, Western solely will determine the quantities of marketable SHP Energy available from the SLCA/IP. Western will notify the Contractor, in writing, of the quantities of Seasonal SHP Energy the Contractor will receive each Winter and Summer Season. The written notification delivered to the Contractor will be attached to and become part of the Contract the same as if it had been expressly set forth therein.

5. Attachment to Exhibit A, Monthly Capacity and Energy Table (Attachment): The Attachment may be revised from time to time by mutual agreement of the Parties as evidenced by signed concurrence to the revision.

Exhibit A  
Revision No. 4  
City of Aztec, New Mexico  
Contract No. 87-SLC-0015

IN WITNESS WHEREOF, the Parties hereto have caused this Exhibit A to be duly executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By:   
Power Marketing and Contracts Team Lead  
CRSP Customer Service Center  
Western Area Power Administration  
Salt Lake City, Utah

CONTRACTOR

By:   
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

# Staff Summary Report

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**MEETING DATE:** October 10, 2017  
**AGENDA ITEM:** VIII. CONSENT AGENDA (F)  
**AGENDA TITLE:** Resolution 2017-1063 Surplus

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**ACTION REQUESTED BY:** Library  
**ACTION REQUESTED:** Approval of Resolution 2017-1063  
**SUMMARY BY:** Kathy Lamb

---

## **PROJECT DESCRIPTION / FACTS**

- The Library, during the normal course of operations, reviews circulation of all materials. Materials which are not circulating or are out of date are pulled from the shelves and become surplus material. These items would have been purchased with city or state library funds or donated to the library. Materials pulled include a large collection of adult and youth books, several DVDs and music CDs.
- Approved library surplus items will be disposed of in a variety of ways to best serve the library and the community. Materials which may have use to Good Sam's, local schools, and/or veteran's programs will be donated. Materials which may have public interest will be packaged and available for sale at the library. Other materials may be packaged and sent to book outlets at no cost to the city. The Public Surplus website has not resulted in interest for library materials, although it will continue to be utilized as well.
- If the items are not sold they will be donated or disposed of according to NM 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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**SUPPORT DOCUMENTS:** Resolution 2017-1063  
Surplus List

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2017-1063 Declaring Certain Municipal Property Not Essential For Municipal Purpose and Directing It Be Sold or Disposed.

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**SURPLUS RESOLUTION 2017-1063  
OCTOBER 12, 2017  
SURPLUS LIST**

## **Library Surplus Books**

### **Junior Fiction**

The door in the wall	De Angeli, Marguerite
The cat ate my gymsuit	Danziger, Paula
Amber Brown is not a crayon	Danziger, Paula
The red badge of courage	Crane, Stephen
Akiko and the Alpha Centauri 5000	Crilley, Mark
Akiko and the Great Wall of Trudd	Crilley, Mark
Akiko and the intergalactic zoo	Crilley, Mark
Akiko in the Castle of Alia Rellapor	Crilley, Mark
Akiko in the Sprubly Islands	Crilley, Mark
Party time / by Fiona Cummings	Crilley, Mark
Mission from Mount Yoda	Dauids, Paul & Dauids,Hollace
Queen of the Empire	Dauids, Paul & Dauids,Hollace
Miracle on 34th Street	Davies, Valentine
The dream thief	DeMatteis, J.M.
The road to Inconceivable	DeMatteis, J.M.
The fourth grade wizards	DeClements, Barthe
The ballad of Lucy Whipple	Cushman, Karen
Gargoyles don't drive school buses	Dadey, Debbie & Jones, Marcia Thornton
Genies don't ride bicycles	Dadey, Debbie & Jones, Marcia Thornton
Hercules doesn't pull teeth	Dadey, Debbie & Jones, Marcia Thornton

**SURPLUS RESOLUTION 2017-1063  
OCTOBER 12, 2017  
SURPLUS LIST**

Mermaids don't run track	Dadey, Debbie & Jones, Marcia Thornton
Pirates don't wear pink sunglasses	Dadey, Debbie & Jones, Marcia Thornton
Mummies don't coach softball	Dadey, Debbie & Jones, Marcia Thornton
Trolls don't ride roller coasters	Dadey, Debbie & Jones, Marcia Thornton
Too many Blooms	Daly, Catherine R.
Flower feud	Daly, Catherine R.
M is for Mama's boy	Buckley, Michael
School of Fear	Daneshvari, Gitty
Mannheim Steamroller Halloween	Davis, Chip
Barking at a fox-fur coat	Davis, Donald
Captain Underpants Invasion of the Cafeteria Ladies	Pilkey, Dav
Because of Winn-Dixie	Di Camillo
The tiger rising	DiCamillo, Kate
The tale of Despereaux	DiCamillo, Kate
The Fire Eternal	D'Lacey, Chris
Fire star	D'Lacey, Chris
The creepy creations of Professor Shock	Stine, R.L.
The adventures of Captain Underpants	Pilkey, Dav
Charlie and the chocolate factory	Dahl, Roald
Dark Island trilogy	
Sky Jumpers	Eddleman, Peggy
Santa Paws on Christmas Island	Edwards, Kris
Santa Paws Saves the Day	Edwards, Kris
Incident at Hawk's Hill	Eckert, Allen

**SURPLUS RESOLUTION 2017-1063  
OCTOBER 12, 2017  
SURPLUS LIST**

Sky Jumpers the Forbidden Flats	Eddleman, Peggy
Little Shop of Magic	Farber, Erica
The Matchlock Gun	Edmonds Walter D.
The Black Stallion	Farley, Walter
Son of the Black Stallion	Farley, Walter
The Black Stallion and Flame	Farley, Walter
The Black Stallion and Satan	Farley, Walter
The Black Stallion Returns	Farley, Walter
The Black Stallion's Courage	Farley, Walter
The Black Stallion Revolts	Farley, Walter
Jim Ugly	Fleischman, Sid
The Borning Room	Fleischman, Paul
Inkheart	Funke, Cornella
Inkspell	Funke, Cornella
Bionicle Legends of Metru Nui	Farshtey, Greg
Bionicle The Darkness Below	Farshtey, Greg
High School Musical Battle of the Band	Grace, N B
High School Musical the Junior Novel	Grace, N B
High School Musical 2 the Junior Novel	Grace, N B
High School Musical Broadway Dreams	Grace, N B
Flour Babies	Fine, Anne
Fifth Grade Frankenstein	Fields, Terri
Diamond Willow	Frost, Helen
Mallory on the Move	Friedman, Laurie
Mouseheart	Fiedler, Lisa

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Step Fourth Mallory	Friedman, Laurie
Scooby Doo and the Mummy's Curse	Gelsey, James
Scooby Doo and the Howling Wolfman	Gelsey, James
Young Black Stallion	Farley, Walter
The Fabled Fourth Grader of Aesop Elementary School	Fleming Candace
Harriet the Spy	Fitzhugh, Louise
Christmas at Stony Creek	Greene, Stephanie
Stone Fox	Gardiner, John Reynolds
Shadow Spinner	Fletcher, Susan
The Girl Who Could Fly	Forester, Victoria
There's an Owl in the Shower	George, Jean Craighead
Lily's Crossing	Giff, Patricia R.
A Line in the Sand	Garland, Sherry
Fortunately the Milk	Gaiman, Neil
Joey Pigza Swallowed the Key	Gantos, Jack
The Knaveheart's Curse	Griffin, Adele
Raggedy Ann Stories	Gruelle, Johnny
Umbrella Summer	Graff, Lisa
Toad Rage	Gleitzman, Morris
Water Street	Giff, Patricia
The Witches of Hopper Street	Gondosch, Linda
The Little White Horse	Goudge, Elizabeth
Pitchers of Hollis woods	Giff, Patricia Reilly
Adam of the Road	Grey, Elizabeth Janet
Vampire Island	Griffin, Adele

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The Ghost Sitter	Griffin, Peni R.
Star Wars the Clone Wars Grievous Attacks	
Ghosthunters and the Incredibly Revolting Ghost	Funke Cornelia

**Young Adult**

Parasyte 7	Iwaaki, Hitosi
Parasyte 8	Iwaaki, Hitosi
Vampire Knight -	Hino, Matsuri
Dragon ball full color: Saiyan arc volume 2	Toriyama, Akira

**Easy**

The Dumb Bunnies	Denim, Sue
Thumper and the Noisy Ducky	Driscoll, Laura
5 Minute Christmas Stories	Vasilovich, Guy
The 13 Nights of Halloween	Steve Kenson

**Adult Fiction**

Public Secrets	Roberts, Nora
Lilac Girls	Kelly, Martha Hall
Phantom Prey	Sandford, John
Club Dead	Harris, Charlanie
Oolong Dead	Childs, Laura
Burning Water	Lackey, Mercedes



# **CITY OF AZTEC RESOLUTION 2017-1063**

**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 described on the attached list which is owned by the City is surplus and not essential for a municipal purpose.

PASSED, APPROVED AND SIGNED this 12<sup>th</sup> day of October 2017.

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

ATTEST:

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CITY CLERK KARLA SAYLER

# Staff Summary Report

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**MEETING DATE:** October 10, 2017  
**AGENDA ITEM:** VIII. CONSENT AGENDA (G)  
**AGENDA TITLE:** Approval to Have Question on Ballot for Election in March, 2018 on Sunday Alcohol Sales

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**ACTION REQUESTED BY:** Commission  
**ACTION REQUESTED:** Approval to Have Question on Ballot for Elections in March, 2018 on Sunday Alcohol Sales  
**SUMMARY BY:** Karla Saylor

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## PROJECT DESCRIPTION / FACTS

Commission has requested to put this item on agenda for approval.

This would allow for March 2018 election ballot to have the following question on it:

- **Shall Sunday Sales Of Alcoholic Beverages By The Drink For Consumption On The Licensed Premises Of Licensees Be Allowed?**

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**SUPPORT DOCUMENTS:** None

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**DEPARTMENT'S RECOMMENDED MOTION:** Move To Approve To Have Question On Election Ballot In March 2018 : **Shall Sunday Sales Of Alcoholic Beverages By The Drink For Consumption On The Licensed Premises Of Licensees Be Allowed?**

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