

AG E N D A
CITY OF AZTEC
CITY COMMISSION MEETING
March 12, 2019
201 W. Chaco, City Hall
6:00 p.m.

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. NEW MEXICO PLEDGE

I Salute the Flag of the State of New Mexico and the Zia Symbol of Perfect Friendship among United Culture's

V. ROLL CALL

VI. AGENDA APPROVAL

VII. CITIZEN RECOGNITION

VIII. EMPLOYEE RECOGNITION

IX. CITIZENS INPUT (3 Minutes Maximum)

X. CONSENT AGENDA

- A. Commission Meeting Minutes February 26, 2019
- B. Resolution 2019-1119 in Support of House Bill 83
- C. NM Aviation N19-19-02 Grant Agreement
- D. Resolution 2019-1120 Municipal Surplus
- E. Resolution 2019-1121 Real Property Surplus (HUB)
- F. City of Aztec/Comcast Cable of New Mexico Pole Attachment Agreement
- G. Resolution 2019-1122 Special Budget Resolution Capital Projects Fund
- H. Legal Services Agreement between City of Aztec and Gallagher & Kennedy, P.A.

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"

XI. ITEMS FROM CONSENT AGENDA

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

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

XII. BUSINESS ITEMS

- A. Final Adoption of Ordinance 2019-489 Amending Chapter 16, Section 16-211
Solid Waste and Recycle Rates
- B. Aztec Municipal Golf Course Agreement

XIII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

XIV. DEPARTMENT REPORTS

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

XV. ADJOURNMENT

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

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
2 CITY OF AZTEC
3 COMMISSION MEETING MINUTES
4 February 26, 2019
5

6 **I. CALL TO ORDER**
7

8 Mayor Victor Snover called the Meeting to order at 6:00 pm at the Aztec City
9 Commission Room, City Hall, 201 W. Chaco, Aztec, NM.
10

11 **II. INVOCATION**
12

13 The Invocation was led by Mayor Victor Snover
14

15 **III. PLEDGE OF ALLEGIANCE**
16

17 The Pledge of Allegiance was led by Commissioner Austin Randall
18

19 **IV. NEW MEXICO PLEDGE**
20

21 I Salute The Flag Of The State Of New Mexico And The Zia Symbol Of Perfect
22 Friendship Among United Culture's.
23

24 The New Mexico pledge was led by Commissioner Randall
25

26 **V. ROLL CALL**
27

28 Members Present: Mayor Victor Snover; Mayor Pro-Tem Fry;
29 Commissioner Sipe; Commissioner Mark
30 Lewis (Facetime); Commissioner Austin Randall
31

32 Members Absent: NONE
33

34 Others Present: City Manager Steve Mueller; City Attorney Nicci Unsicker;
35 Project Manager Ed Kotyk; City Clerk Karla Sayler (see
36 attendance sheet)
37

38 **VI. AGENDA APROVAL**
39

40 MOVED by Commissioner Randal to Approve the Agenda as given
41 SECONDED by Mayor Pro-Tem Fry
42

43 All voted Aye: Motion passed five to zero
44
45
46

47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91

VII. CITIZEN RECOGNITION

City Manager Steve Mueller introduced the Aztec High School Wrestling Team and congratulated them on winning the State Championship. Coach Maxwell introduced the wrestling team. Mayor Snover mentioned that it is awesome to see them grinding away. Mayor Snover mentioned that he has had good interactions with the members of Waste Management through the transition.

VIII. EMPLOYEE RECOGNITION

City Manager Steve Mueller recognized Sue Garcia for retirement with the City after 26 years. He also thanked staff for all the help with snow removal.

IX. CITIZENS INPUT (3 Minutes Maximum)

Monty Shalley spoke to commission about McWilliams Road which connects to Oliver Dr. and 516. He explained that part of the road is paved and the other part is dirt which is very rough. He mentioned that the developer of the subdivision has not followed through with their commitment to pave the street and would like to see all of the road paved.

Diana Mesch mentioned she wanted to address the Commission about concerns around the violation of the 2nd and 14th amendment to the constitution. She asked Commission to hold a vote on the second amendment sanctuary city resolution. She feels that citizens on both sides should have the chance to speak on this issue.

X. CONSENT AGENDA

- A. Commission Workshop Minutes February 12, 2019
- B. Commission Meeting Minutes February 12, 2019
- C. Commission Special Meeting Minutes February 18, 2019
- D. Change in Library Board Appointment for Commission Member
- E. Letter of Support to Governor Lujan for Senate Bill 367
- F. Resolution 2019-1117 Authorizing Opening And Closing Of Time Certificate Of Deposit for City Of Aztec
- G. Law Enforcement Protection Fund Grant
- H. Special Budget Resolution 2019-1118

Moved by Commissioner Sipe, SECONDED by Mayor Pro-Tem Fry to approve the Consent Agenda as given

All Voted Aye: Motion Passed Five to Zero

92 **XI. ITEMS FROM CONSENT AGENDA**

93
94
95

NONE

96
97
98
99

XII. BUSINESS ITEMS

100 **A. Direction for HUB Incubator Building**

101
102
103
104
105
106
107
108
109

Community Development Director Steven Saavedra mentioned that this goes back to the workshop that was held on the HUB Incubator building owned by the City and he included the options in the motion for commission. Commissioner Sipe mentioned that EDAB did give their recommendation on the building. Mayor Snover mentioned that he felt we should sell the building and move forward. Commissioner Sipe mentioned that it was a great idea when it was approved but they didn't realize all the challenges that would be involved with staffing, remodeling and operating the HUB as an incubator.

110 Moved by Commissioner Randall, SECONDED by Mayor Pro-Tem Fry to sell
111 real property, located at 119 E. Chuska St., 119 S. Church Ave, Aztec, NM 87410;
112 otherwise known as the HUB-Business Incubator

113
114

A Roll Call was taken: All Voted Aye: Motion Passed Five to Zero

115
116
117

B. Direction for Destruction or Storage for Aztec Teen Center

118 City Manager Steve Mueller explained that we are looking for direction as to sell
119 the teen center or to keep it. The City can use the building for storage by the Electric
120 Department or see if there are any economic development possibilities for the building.
121 Mayor Snover mentioned that this was also workshopped and mentioned that he was
122 comfortable with the information so far. Commissioner Lewis mentioned he was inclined
123 to keep the property.

124
125
126

Moved by Commissioner Sipe, SECONDED by Commissioner Randall To Keep
Aztec Teen Center And Explore Options For Its Use

127
128

A Roll Call was taken: All Voted Aye: Motion Passed Five to Zero

129
130

XIII. CITY MANAGER/COMMISSIONERS/ATTORNEY REPORTS

131
132
133

City Manager Steve Mueller glad to see all the snow hope we have a better
summer and he has the first drought stakeholders meeting tomorrow.

134
135
136

Commissioner Randall gave fishing report at Tiger Pond.

137 Commissioner Sipe mentioned that NWNM Seniors received a contract with Non
138 Metro Triple A for food and are looking to be in good shape. She attended EDAB
139 meeting last Thursday and Electric Director Ken George attended and gave them good
140 ideas about the lighting down town so hopefully something will move forward on that
141 and also had a presentation from Wilann Thomas with the Visitors Center which was
142 good; She has MPO meeting Thursday. She invited everyone to attend the dancing with
143 the stars March 9th and all money goes to charity. She wanted to remind all
144 Commissioners that we should not make general statements about things that will or will
145 not happen in Aztec if we have not voted on it as a Commission, in our form of
146 Government we each have only one vote and no one person has more power than any
147 other Commissioner.

148
149 Mayor Pro-Tem Fry mentioned that she had a good experience serving on the
150 Library Board this past year and thanked Commissioner Randall for taking her place on
151 the board she is still serving on 3 other boards.

152
153 Mayor Snover mentioned that he and Steven Saavedra went to Santa Fe last
154 week for NMML Day. They met with Senator Neville and Senator Bandy and he
155 appreciated being able to sit down with them. The Mayor's Ball is this weekend and he
156 will be attending. He mentioned that Chief Heal has been working tirelessly since the
157 school shooting on HB 83 and he appreciated everything that he is doing and is in
158 support of the Bill.

159 160 **XIV. DEPARTMENT REPORTS**

161
162 Chief Heal mentioned that he just drove in from Santa Fe from testifying on
163 House Bill 154 for funding for the Law Enforcement Protection Fund for the Police
164 department which would receive \$50,000 and \$1,000 for each officer in the departments
165 if the bill is passed. This will help with additional costs associated with the Police
166 Departments.

167
168 General Services Director Jeff Blackburn explained that he wanted to update
169 Commission on what's happening with the Outdoor Recreation Industry. He mentioned
170 that this was started by Mayor Duckett of Farmington and the goal is to enhance
171 outdoor experiences. The goal is to build a map of trails throughout the whole area so
172 they provided them our information. He thanked Wilann and Ed for all their help in
173 providing information. He explained that this is Farmington's Project but we will help out
174 however we can.

175 176 **XV. ADJOURNMENT**

177
178 Moved by Mayor Snover, **SECONDED** by Commissioner Sipe to adjourn the
179 meeting at 6:43 p.m.

180
181

182
183
184
185
186
187
188
189
190
191
192
193

Mayor, Victor Snover

ATTEST:

Karla Saylor, City Clerk

MINUTES PREPARED BY:

Sherlynn Morgan, Administrative Assistant

DRAFT

Staff Summary Report

MEETING DATE:	March 12, 2019
AGENDA ITEM:	X. CONSENT AGENDA (B)
AGENDA TITLE:	Resolution 2019-1119 in Support of 2019 New Mexico House Bill 83 (Extreme Risk Firearm Protection Order Act)

ACTION REQUESTED BY:	Mayor Victor C. Snover
ACTION REQUESTED:	Approval of Resolution # 2019-1119
SUMMARY BY:	Steve Mueller

PROJECT DESCRIPTION / FACTS

2019 New Mexico House Bill 83 (Extreme Risk Firearm Protection Order Act) provides for the issuance of court orders to require the relinquishment of firearms for some period under certain circumstances.

SUPPORT DOCUMENTS:	Resolution # 2019-1119
---------------------------	------------------------

DEPARTMENT'S RECOMMENDED MOTION:	Move to Approve Resolution 2019-1119 in Support of 2019 New Mexico House Bill 83
---	--

CITY OF AZTEC, NEW MEXICO
RESOLUTION 2019-1119

Resolution in Support of 2019 New Mexico House Bill 83 (Ely)

WHEREAS, N.M. Stat. Ann., Section 3-17-1 provides that municipalities have the power to adopt resolutions for the purpose of “providing for the safety [and] preserving the health ... of the municipality and its inhabitants;” and

WHEREAS, The members of this Commission have taken an oath to support and defend the United States Constitution, the Constitution of the State of New Mexico and the laws of the State of New Mexico; and

WHEREAS, Aztec High School on December 7, 2017 was the scene of a horrific school shooting where two of our children were brutally murdered; and

WHEREAS, We never want an incident like this to occur again at our school or any other school in the State of New Mexico or in the Nation, or at any other location; and

WHEREAS, a person entering a crisis in his or her life often exhibits signs that may alert others to the person’s mental state. For example, 80% of people considering suicide give some sign of their intentions and according to a 2018 report by the FBI, most mass shooters exhibit an average of four to five dangerous warning signs of their violent intentions; and

WHEREAS, in many of the recent mass shootings, community members noted warning signs beforehand but there was nothing Law Enforcement could do to remove the shooter’s access to guns before the shooting under current law. A disturbed young man killed two students at Aztec High School in Aztec, New Mexico before killing himself. Twenty months earlier, he had been investigated by the FBI for making online inquiries about purchasing weapons for a mass shooting. However, no legal mechanisms existed to provide an opportunity for the FBI nor local law enforcement to restrict his access to guns; and

WHEREAS, before a 19-year-old man murdered 17 people at a high school in Parkland, Florida, on February 14, 2018, he had also exhibited warning signs. Among other things, he had been violent at school and with neighbors, posted photos of weapons and dead animals online, and had elicited the interest of the FBI when he posted a comment about becoming a school shooter. The family in whose home he was staying was aware that he owned a firearm. In response to the Parkland School shooting and warning signs demonstrated by the shooter, Florida enacted a law that enables law enforcement officers to request a court order removing guns in such dangerous situations; and

WHEREAS, thirteen states, including Connecticut and Indiana, also authorize law enforcement officers to request court orders removing guns from individuals demonstrated to be dangerous to self or others. Twenty two other States and the Federal government have pending

legislation on this issue. A 2016 study of Connecticut's law demonstrated that, for every 10 to 20 guns removed using the law, one suicide was prevented. Additionally, Indiana's version of this law was associated with 7.5% fewer firearm suicides in Indiana over the decade following the law's passage in 2005.

NOW, THEREFORE BE IT RESOLVED that the Aztec City Commission, by the authority granted the Commission by the laws of the State of New Mexico and people of the City of Aztec to protect their health and safety, affirms its support for 2019 New Mexico House Bill 83, which aims to reduce gun deaths and injuries by providing a formal court procedure whereby law enforcement officers and family or household members may obtain a court order that temporarily prevents a person from access to firearms and ammunition in situations in which the person in crisis poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition.

BE IT FURTHER RESOLVED that this Commission affirms its support for 2019 New Mexico House Bill 83, introduced by Representative Daymon B. Ely and Representative Joy Garrett in the exercise of their sound discretion, and affirms its resolve to support decisions by our Police Chief to enforce extreme risk firearms protection order acts thereby giving our Police Department the tools necessary to prevent senseless acts of violence and to protect our most precious resource, our children.

PASSED, APPROVED AND SIGNED this 12th day of March 2019.

VICTOR C. SNOVER, MAYOR

ATTEST:

CITY CLERK KARLA SAYLER

Staff Summary Report

MEETING DATE: March 12, 2019
AGENDA ITEM: X. CONSENT AGENDA (C)
AGENDA TITLE: NM Aviation Grant Agreement Project N19-19-02

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

PROJECT DESCRIPTION / FACTS

- Bohannon Huston was retained by the city as the airport engineer in November 2017 (commission approved 11/14/17). The contract includes multiple tasks which may be completed by Bohannon Huston based on specific task orders approved by the City Commission.
- One of the projects includes the Runway 8-26 Lighting project, design and construction. This project is funded through a combination of federal, state and city funds. The design task order was approved in May 2018 and is approximately 90% complete.
- The state directed the City submit a request for construction funding which was completed the week of February 25, 2019. The state has provided the attached funding agreement for City Commission approval.
- State funding for the construction is 5% of the project, or \$30,000. The City match is 5% and the federal share is 90%, for a total project of \$600,000 (current estimate).
- The federal application process is anticipated to be presented to the Commission in the near future. This process will include Bohannon Huston's task order specific to project construction. It is anticipated this project will bid this summer with construction scheduled for late summer 2019.

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

- The FY20 Preliminary Budget Adopted Budget, Airport Fund, will include the revenue and expenditure budget for this project.

SUPPORT DOCUMENTS: N19-19-02 Aviation Grant Agreement

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve the N19-19-02 Aviation Grant Agreement In The Amount Of \$30,000.

NEW MEXICO DEPARTMENT OF TRANSPORTATION
Aviation Grant Agreement Form



Date

Project Location

Sponsor

Address

City NM Zip Code

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

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

Participation

Funding Breakdown

Contract No. _____

Project No.

Vendor No.

Expiration Date _____

Purchase Order No: _____

AVIATION GRANT AGREEMENT

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

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

1. Purpose.

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

a. Project Description:

RWY 8-26 LIGHTING & VISUAL AIDS - PHASE 2 - CONSTRUCTION

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

State	Sponsor	Other	Total
\$ 30,000	\$ 30,000	\$ 540,000	\$ 600,000

2. The Sponsor Shall:

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

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

3. The Department Shall:

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

4. Both Parties Agree:

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

5. Method of Payment - Reimbursement.

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

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

6. Accountability of Receipts and Disbursements.

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

7. Term.

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

8. Termination for Cause.

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

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

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

9. Disposition of Property.

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

10. Representations and Certification.

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

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

11. Assurances.

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

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

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

12. Third Party Beneficiaries.

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

13. New Mexico Tort Claims Act.

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

14. Scope of Agreement.

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

15. Terms of this Agreement.

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

16. Equal Opportunity Compliance.

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

17. Appropriations and Authorizations of State and Federal Funds.

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

18. Severability.

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

19. Applicable Law.

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

20. Principal Contacts and Notices.

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

Name: Daniel R. Moran
 Title: Grants Administrator

Address: New Mexico Department of Transportation - Aviation Division
 PO Box 9830
 Albuquerque, NM 87119

Office: (505) 244-1788 ext. 9112
 Fax: (505) 244-1790
 E-mail: dan.moran@state.nm.us

Name

Title

Sponsor

Address

City NM Zip Code

Office Phone Fax

E-Mail

21. Amendment.

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

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Recommended by:

By: _____
Aviation Division Director
or Designee

Date: _____

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

By: _____
Assistant General Counsel

Date: _____

SPONSOR

Print Name: _____

By: _____

Date: _____

Title: _____

Staff Summary Report

MEETING DATE: March 12, 2019
AGENDA ITEM: X. CONSENT AGENDA (D)
AGENDA TITLE: Resolution 2019-1120 Municipal Surplus

ACTION REQUESTED BY: Library and General Services
ACTION REQUESTED: Approval of Resolution 2019-1120
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- The General Services Department has identified items no longer necessary to daily operations and request commission approval to sell or otherwise dispose of the equipment.
- 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 Sections 3-54-2 and 13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

PROCUREMENT

- N/A

FISCAL IMPACTS

- Revenues from sale of surplus items will be applied to General Fund / Joint Utility Fund

SUPPORT DOCUMENTS: Resolution 2019-1120
Surplus List

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Resolution 2019-1120 Declaring Certain Municipal Property Not Essential For Municipal Purpose and Directing It Be Sold or Disposed.

CITY OF AZTEC RESOLUTION 2019-1120

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 12th day of March 2019.

VICTOR C. SNOVER, MAYOR

ATTEST:

CITY CLERK KARLA SAYLER

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

LIBRARY SURPLUS	
TITLE	AUTHOR
Hillary's choice / Gail Sheehy	
Living beyond postpartum depression	Jerusha Clark
The ghost-dance religion and the Sioux outbreak of 1890	
The audacity to win	David Plouffe
Winning the drug war at home	Kathy Pride
The complete idiot's guide to understanding Islam	Yahiya Emerick
Crazies to the left of me, wimps to the right : how one side lost its mind and the other lost its nerve	Bernard Goldberg
How to do everything with your iPhone	Jason Chen and Adam Pash
Women in American society	
American social reform movements. Primary sources	Roger Matuz
Lucid dreaming : a concise guide to awakening in your dreams and in your life	Stephen LaBerge
63 documents the government doesn't want you to read	
The post-American world	Fareed Zakaria
Failed states : the abuse of power and the assault on democracy	Noam Chomsky
We are Americans : voices of the immigrant experience	Dorothy and Thomas Hoobler
The road less traveled : a new psychology of love, traditional values, and spiritual growth	M. Scott Peck
The age of miracles : embracing the new midlife	Marianne Williamson
Quantum wellness : a practical and spiritual guide to health and happiness	Kathy Freston
Prostitution and sex trafficking	Louise Gerdes
Women's rights and nothing less	Lisa Frederiksen Bohannon
The smart stepfamily	Ron L. Deal
The working poor : invisible in America	David K. Shipler
The boomer century, 1946-2046 foreword	Ken Dychtwald
Cinderella ate my daughter: dispatches from the front lines of the new girlie-girl culture	
Islam : a short history	Karen Armstrong
Prayer and the five stages of healing	Peter Occhiogrosso
Gospel doctrine	Joseph F. Smith
The myth of Hitler's Pope	David G. Dalin
Why priests: a failed tradition	
Absolute monarchs: a history of the papacy	

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

LIBRARY SURPLUS	
TITLE	AUTHOR
Dry bones dancing	Tony Evans
I know what you know: adventures in gospel ventriloquism	
Money as sacrament : finding the sacred in money : a book for women	Adele Azar-Rucquoi
Sin boldly	Cathleen Falsani
Reading Judas	Elaine Pagels and Karen L. King
Biblical quotations	Jennifer Speake
No more letting go	Debra Jay
Living without God	Ronald Aronson
The righteous mind: why good people are divided by politics and religion	
Legacy of ashes	Tim Weiner
Back to work: why we need smart government for a strong economy	
Greedy bastards: how we can stop corporate communists, banksters, and other vampires from sucking America dry	
Flappers, and the new American woman	Catherine Gourley
Gibson girls and suffragists	Catherine Gourley
Gidgets and women warriors	Catherine Gourley
Ms. and the material girls	Catherine Gourley
Rosie and Mrs. America	Catherine Gourley
Building communities from the inside out	John P. Kretzmann, John L. McKnight
Lost at sea: the Jon Ronson mysteries	
The origins of political order: from prehuman times to the French Revolution	
Blowing smoke	Michael Wolraich
Where have all the leaders gone?	Catherine Whitney
large type: Killing Jesus: a history	
The wisdom of the enneagram	Don Richard Riso and Russ Hudson
Illustrated guide to dreams	Valerie Francis
Birth order and you	Ronald W. Richardson, Lois A. Richardson
To sell is human: the surprising truth about moving others	
Disappearing world	Alonzo C. Addison
The money men	H.W. Brands
Lost and found: unexpected revelations about food and money	

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

LIBRARY SURPLUS	
TITLE	AUTHOR
Killing sacred cows	Garret B. Gunderson, with Stephen Palmer
Recession-proof your financial life	Nancy Dunnan
How a second grader beats Wall Street	Allan S. Roth
Infiltrated: how to stop the insiders and activists who are exploiting the financial crisis to control our lives and our fortunes	
Credit repair kit for dummies	
Social welfare: fighting poverty and homelessness	
Methamphetamine: addiction and treatment	
Drugs and sports	Alan Marzilli
Club drugs	
China ghosts	Jeff Gammage
A child's heart speaks	Claire Silva
A father's love: one man's unrelenting battle to bring his abducted son home	
The murder room	Michael Capuzzo
Abortion: an eternal social and moral issue	
Encyclopedia of birth control	James A. Brundage
Domestic crime	Isobel Brown
Killer on the road: violence and the American interstate	
Capital punishment: cruel and unusual	
And never let her go	Ann Rule
The Franklin scandal: a story of powerbrokers, child abuse and betrayal	
The murder of Dr. Chapman	Linda Wolfe
Midnight express	Billy Hayes with William Hoffer
Three classic volumes from the crime files of Ann Rule	Ann Rule
In the magic corridor	Ann C. Chapin
I'll tell you a tale	Ben Carolton Mead
That every man be armed: the evolution of a constitutional right	
The politics of the oceans	
The inheritance	David E. Sanger
large type: Killing Patton: the strange death of World War II's most audacious general	
You have the right to know your rights	Maurene J. Hinds
Duty: memoirs of a Secretary at war	
Battlestations: American warships of WWII	

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

LIBRARY SURPLUS	
TITLE	AUTHOR
Jane's fighting aircraft of World War I	John W.R. Taylor
Scam-proof your life	Sid Kirchheimer
Viva el amor : a Latino wedding planner	Edna R. Bautista
Life at home in the twenty-first century: 32 families open their doors	
The omnivore's dilemma	Michael Pollan
Excellent sheep: the miseducation of the American elite and the way to a meaningful life	
Creating Room to Read: a story of hope in the battle for global literacy	
Stones into schools	Greg Mortenson
Research ate my brain	Martha Newbigging
The promise of a pencil: how an ordinary person can create extraordinary change	
Social welfare: fighting poverty and homelessness	
Methamphetamine: addiction and treatment	
Drugs and sports	Alan Marzilli
Club drugs	
China ghosts	Jeff Gammage
A child's heart speaks	Claire Silva
A father's love: one man's unrelenting battle to bring his abducted son home	
The murder room	Michael Capuzzo
Abortion: an eternal social and moral issue	
Encyclopedia of birth control	James A. Brundage
Domestic crime	Isobel Brown
Killer on the road: violence and the American interstate	
Capital punishment: cruel and unusual	
And never let her go	Ann Rule
The Franklin scandal: a story of powerbrokers, child abuse and betrayal	
The murder of Dr. Chapman	Linda Wolfe
Midnight express	Billy Hayes with William Hoffer
Three classic volumes from the crime files of Ann Rule	Ann Rule
In the magic corridor	Ann C. Chapin
I'll tell you a tale	Ben Carolton Mead
That every man be armed: the evolution of a constitutional right	

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

LIBRARY SURPLUS	
TITLE	AUTHOR
The politics of the oceans	
The inheritance	David E. Sanger
large type: Killing Patton: the strange death of World War II's most audacious general	
You have the right to know your rights	Maurene J. Hinds
Duty: memoirs of a Secretary at war	
Battlestations: American warships of WWII	
Jane's fighting aircraft of World War I	John W.R. Taylor
Scam-proof your life	Sid Kirchheimer
Viva el amor : a Latino wedding planner	Edna R. Bautista
Life at home in the twenty-first century: 32 families open their doors	
The omnivore's dilemma	Michael Pollan
Excellent sheep: the miseducation of the American elite and the way to a meaningful life	
Creating Room to Read: a story of hope in the battle for global literacy	
Stones into schools	Greg Mortenson
Research ate my brain	Martha Newbigging
The promise of a pencil: how an ordinary person can create extraordinary change	
Feed muscle, shrink fat diet : 6 weeks to the best shape of your life	Kathy Smith
Suzanne Somers' eat great, lose weight	Suzanne Somers
Suzanne Somers' get skinny on fabulous food	Suzanne Somers
ChangeOne : the diet & fitness plan, lose weight simply, safely and forever	John Foreyt
The 3-hour diet : how low-carb diets make you fat and timing makes you thin	Jorge Cruise
The Gabriel method : the revolutionary diet-free way to totally transform your body	Jon Gabriel
The feel-good diet : improves your mood, and keeps the pounds off for good	Cheryle R. Hart and Mary Kay Grossman
The good mood diet : feel great while you lose weight	Susan M. Kleiner, with Bob Condor
Conquer the fat-loss code	Wendy Chant
Food matters : a guide to conscious eating with more than 75 recipes	Mark Bittman
Hungry for change: ditch the diets, conquer the cravings, and eat your way to lifelong health	
The spark: the 28-day breakthrough plan for losing weight, getting fit, and transforming your life	
20 years younger: look younger, feel younger, be younger	

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

LIBRARY SURPLUS	
TITLE	AUTHOR
Jumpstart to skinny: the simple 3-week plan for supercharged weight loss	
What color is your diet? : the 7 colors of health	David Heber
Protein power	Michael R. Eades & Mary Dan Eades
The macrobiotic path to total health	Michio Kushi and Alex Jack
I can make you thin : the revolutionary system used by more than 3 million people	Michael Neill
Salt, sugar, fat: how the food giants hooked us	
The spectrum : live longer, lose weight, and gain health	Dean Ornish
The 4 day diet	Ian K. Smith
The female brain	Louann Brizendine
Boost your brain: the new art and science behind enhanced brain performance	
How to create a mind: the secret of human thought revealed	
Age erasers for women : the revolutionary new plan to strip away 10 years or more!	
In defense of food : an eater's manifesto	Michael Pollan
The program : the life-changing 12-week method	Kelly Traver and Betty Kelly Sargent
Women, weight, and hormones : a weight-loss plan for women over 35	Elizabeth Lee Vliet
Aging well : the complete guide to physical and emotional health	Jeanne Wei, Sue Levkoff
Your best body now : look and feel fabulous at any age the eat clean way	Tosca Reno
The honest life: living naturally and true to you	
Dragon hunter	Michael J. Novacek
How to solve word problems in calculus	Eugene Don, Benay Don
Geometry demystified	Stan Gibilisco
The backyard astronomer's guide	Terence Dickinson & Alan Dyer
Uranus, Neptune, Pluto, and the outer solar system	Linda T. Elkins-Tanton
Solar rain : the earth changes have begun	Mitch Battros, with Tony Stubbs
Temperate forests	Michael Allaby
Astonishing animals	Tim Flannery & Peter Schouten

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

LIBRARY SURPLUS	
TITLE	AUTHOR
Chasing Doctor Dolittle: learning the language of animals	
Butterflies	Brian Kenney
Reference atlas to the birds of North America	Mel M. Baughman
The voice of the coyote	Olaus J. Murie
The soul of an octopus: a surprising exploration into the wonder of consciousness	
Suzanne Somers' fast and easy	Michael Galitzer
Weight watchers she loses, he loses : the truth about men, women, and weight loss	Weight Watchers
The phytozyme cure: conditions with powerful plant nutrients	Michelle Schoffro Cook
The whole grain diet miracle	Lisa Hark, Darwin Deen
The new glucose revolution	Jennie Brand-Miller
Clean body	Michael DeJong
Green goes with everything	Sloan Barnett
Shrink your female fat zones	Denise Austin
What's age got to do with it?	Robin McGraw
Body-for-life	Bill Phillips with Michael D'Orso
Sly moves	David Hochman
Fat burning exercises for energy & weight loss	Jane Wake
Hoopng	Christabel Zamor with Ariane Conrad
Pee wee pilates	Holly Jean Cosner and Stacy Malin
Inhalants and solvents : sniffing disaster	Noa Flynn
For women only	Jennifer Berman and Laura Berman, Elisabeth Bumiller
15 minute better back workout	Suzanne Martin
The backsmart fitness plan	Adam Weiss
SURF'S UP	KWANE ALEXANDER
MONSTEROLOGY	ERNEST DRAKE'S
WIZARDOLOGY	MASTER MERLIN
GUS BEEZER	DAN BUCKLEY
LEGENDS OF ZITA	BEN HATKE

**CITY OF AZTEC
RESOLUTION 2019-1120
MARCH 12, 2019**

MUNICIPAL SURPLUS

GENERAL SERVICES DEPARTMENT SURPLUS

Department	Item/Model	
GS		<p>3 Point Hitch Sprayer with Tank Unit #: 007-006</p> <p>Acquisition Date: 1988</p> <p>Reason for Surplus: Replaced Condition: Poor</p>
GS		<p>Husquvarna Sod Cutter Model: SC18 S/N: 063391248 Unit #: 012-023</p> <p>Acquisition Date: 2006</p> <p>Reason for Surplus: Equipment did not function as needed and has been replaced Condition: Fair</p>
GS		<p>Titan Portable Generator Model: TG800 S/N: 129568 Unit #: 014-012</p> <p>Acquisition Date: 2004</p> <p>Reason for Surplus: Replaced with equipment suited to the needs of the department Condition: Fair</p>
GS		<p>Hotsy Powerwash Model: 555 S/N: C80052-0700 Unit #: 023-033</p> <p>Acquisition Date: 2000</p> <p>Reason for Surplus: Non-functioning equipment was replaced Condition: Poor</p>

Staff Summary Report

MEETING DATE: March 12, 2019
AGENDA ITEM: X. CONSENT AGENDA (E)
AGENDA TITLE: Resolution 2019-1121 Real Property Surplus

ACTION REQUESTED BY: Library and General Services
ACTION REQUESTED: Approval of Resolution 2019-1121
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- The City purchased the property located at 119 S Church/119 E Chuska in December 2017 and has been operated as business incubator.
- During the February 26, 2019 regular City Commission meeting, the governing body directed City staff to sell the property. The first step in this process is the approval of a resolution declaring the property as surplus.
- NMSA 1978 13-6-2 B(3) provides the property may be disposed by means of competitive sealed bid, public auction or negotiated sale. Any sale of real property exceeding \$25,000 is subject to NM Board of Finance approval prior to closing on the property sale.

PROCUREMENT

- N/A

FISCAL IMPACTS

- Revenues from sale of real property will be applied to General Fund

SUPPORT DOCUMENTS: Resolution 2019-1121

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Resolution 2019-1121 Declaring Certain Municipal Property Not Essential For Municipal Purpose and Directing It Be Sold.

CITY OF AZTEC
Resolution 2019-1121

**A Resolution Declaring Certain Municipal Real Property
Not Essential for Municipal Purpose and Directing It Be Sold**

WHEREAS, Sections 3-54-2 and 13-6-1 of NMSA, 1978 Compilation authorizes municipalities to sell real property which is not essential for a municipal purpose;

WHEREAS, the City of Aztec owns certain real property which is not 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 according to statute.

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

Lots 9, 10, 11 and 12 in Block 31 of the Original Townsite of Aztec, recorded in Book 1179 / Page 921. The property is a 3,670 square foot commercial property that is situated on a 14,000 square foot site. There is no personal property included. Property location is 119 S. Church Avenue / 119 E. Chuska St, Aztec, New Mexico 87410.

PASSED, APPROVED AND SIGNED this 12th day of March 2019.

VICTOR C. SNOVER, MAYOR

ATTEST:

CITY CLERK KARLA SAYLER

Staff Summary Report

MEETING DATE:	March 12, 2019
AGENDA ITEM:	X. CONSENT AGENDA (F)
AGENDA TITLE:	Comcast Cable Pole Attachment Agreement

ACTION REQUESTED BY:	Ken George, Electric Director
ACTION REQUESTED:	Approval of Pole Attachment Agreement with Comcast Cable of New Mexico/Pennsylvania
SUMMARY BY:	Ken George

PROJECT DESCRIPTION / FACTS

Comcast Cable a State registered communications utility offering television, voice over IP and internet services. The City of Aztec and Comcast Cable had a pole attachment agreement that ran for 15 years, expiring December 31 2018. City Staff and Comcast Cable have agreed to a new 10 year contract with a 5 year adder. Please see attached agreement.

The City Attorney has read the agreement and finds the agreement legally acceptable. (KBG)

FISCAL IMPACTS

Rates charged for attachments increased from \$13.00 per pole per year to \$18.00 per pole per year for the first five years. Increase to \$22.50 per pole per year from years 6 through 10 and \$26.50 per pole per year for years 11 through 15. Currently Comcast is attached to 1191 poles. (KBG)

SUPPORT DOCUMENTS:	Pole Attachment Agreement
---------------------------	---------------------------

DEPARTMENT'S RECOMMENDED MOTION:	Move to Approve , Pole attachment agreement between Comcast Cable of New Mexico/Pennsylvania and the City of Aztec
---	--



February 20, 2019

Ken George
City of Aztec Electric Director
201 W Chaco
Aztec, NM 87410

Dear Mr George

Following is two signed original Joint Use Pole Attachment License Agreement. Please send us one signed original for our records.

Sincerely

Abel Bazan
Construction Manager for NM and AZ

CITY OF AZTEC
JOINT USE POLE ATTACHMENT LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of **January 2019** ("Effective Date") by and between the CITY OF AZTEC, (hereinafter referred to as "LICENSOR"), and **COMCAST CABLEVISION OF NEW MEXICO/PENNSYLVANIA LLC.**, a corporation organized and existing under the laws of the State of New Mexico (hereinafter referred to as "LICENSEE"),

WITNESSETH THAT:

WHEREAS, LICENSEE desires to place its cables, appliances, equipment and facilities, (hereinafter collectively called "attachments") on LICENSOR's distribution and transmission utility poles, (hereinafter collectively called "poles"); and

WHEREAS, LICENSOR is willing to permit said attachments to its poles solely for the purpose of permitting LICENSEE to provide services as LICENSEE is authorized to provide in compliance with local, state, or federal law, and where such attachments will not interfere with its own core use, subject to the terms and provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE I

SCOPE OF AGREEMENT

(a) Subject to compliance with the terms of this Agreement, LICENSOR agrees to issue to LICENSEE a revocable, nonexclusive license authorizing LICENSEE to place its attachments on LICENSOR's poles. Said license includes the right for the continued placement and maintenance of LICENSEE's attachments previously authorized by LICENSOR.

(b) No use of LICENSOR's poles or payment of any fees or charges required under this Agreement shall vest in LICENSEE any property rights in said poles, but LICENSEE shall have a mere license. LICENSOR is not required to construct, retain, extend, place or maintain any poles or other facilities not needed for its own service requirements, and LICENSOR reserves the right to exclude from LICENSEE's use any poles; provided, that LICENSOR may only deny access to poles where there is insufficient capacity or for the reason of safety, reliability and applicable engineering standards as defined by the NESC; or by City ordinance.

(c) LICENSEE acknowledges that LICENSOR has heretofore entered into, or may in the future enter into, arrangements or agreements with others not party to this Agreement regarding the joint use or rental of poles covered by this Agreement. Therefore, any application made under the terms of this Agreement and any permit granted shall be subject to such joint use or rental agreements or arrangements.

When a party to this Agreement enters into a license Agreement with a third party concerning use of the Joint Pole(s) it owns, it shall require the attachments of such third party to comply with substantially the same requirements as set forth in this Agreement.

The party owning the Joint Pole(s) shall require such third party to compensate Licensor and Licensee for reasonable costs incurred in rearranging any of their attachments necessary to provide clearance, as required in this Agreement, for such third party's installation upon the Joint Pole(s).

In no situation, shall any third party's modification or attachment to any joint pole encumber, obstruct, or impede the maintenance, removal for installation, or permanent removal of any of the other parties' existing attachments.

ARTICLE II

TERM OF AGREEMENT

(a) The term of the Pole attachment license agreement granted hereunder shall be for an initial term of ten (10) years, commencing upon the Effective date of the Pole attachment license agreement, unless the Pole attachment license agreement is renewed or is lawfully terminated in accordance with the terms of this Pole attachment license agreement. At the conclusion of the initial ten (10) year term, as determined by mutual consent of both parties, a five (5) year extension to the Pole attachment license agreement shall be granted to LICENSEE.

(b) Upon termination of this Agreement in accordance with any of its terms, LICENSEE shall immediately remove its attachments from all poles of LICENSOR. If not so removed within three hundred eighty (380) days or a negotiated signed agreement extending the time longer than 380 days, all lines, equipment and attachments shall become the property of the LICENSOR and may be removed by LICENSOR, at the expense of LICENSEE, and LICENSOR shall be free from any liability from removing or disposing of them.

ARTICLE III

FEES AND CHARGES

(a) LICENSEE shall pay for each occupied pole according to the schedule set forth below:

- (1) \$18.00 per pole for years 1 through 5 of the agreement.
- (2) \$22.25 per pole for years 6 through 10 of the agreement.
- (3) \$26.50 per pole for years 11 through 15 of the agreement.

(b) Annual rental payments shall be based on the number of poles on which there exists any attachment of LICENSEE on December 31 of the preceding year. LICENSOR will notify LICENSEE of such amount due for any year that this Agreement is in effect on or before March 31 of the preceding year. LICENSEE shall pay the Amount Due in accordance with

Article XVII of this Agreement. The above rental rate may be revised by LICENSOR upon written notice to LICENSEE at least six (6) months in advance of the date the next rental payment is due. Provided, however, that any adjustment to the rental rate shall not exceed the proportionate change over the same time period in the Handy-Whitman Index for Electric Utility Construction Cost for the Southwest Region of the United States for Federal Energy Regulatory Account Number 364, Poles, Towers and Fixtures. The revised rate will apply to all attachments existing on December 31 of the year in which notice is given and will continue to apply to all existing and future attachments unless further revised.

ARTICLE IV

APPLICATION FOR PERMIT AND NOTIFICATION OF ATTACHMENTS

(a) Before making attachment to any of LICENSOR's poles, LICENSEE shall make application to LICENSOR specifying the location of each pole on the form attached as Exhibit A. Within thirty (30) working days after receipt of the application, LICENSOR shall return to LICENSEE said application indicating thereon whether or not it is willing to permit the joint use of poles, and if so, under what conditions. Notwithstanding the foregoing, LICENSEE shall not be required to make application for attachments previously authorized by LICENSOR. The application requirement will be waived for new customer service drops added to poles on which LICENSEE already has an authorized attachment provided the LICENSEE has left efficient climbing and/or aerial basket approach space on the alley or road side of the pole or structure. In instances where a service drop is the initial attachment on Licensor's pole, Licensee shall make application to Licensor within 14 days of such attachment.

(b) LICENSOR shall have the sole right to determine the availability of such poles for joint use and shall be under no obligation to grant permission for LICENSEE's use of the poles. LICENSEE shall have the right to occupy the space allotted by LICENSOR under the conditions and in accordance with the terms of this Agreement. Upon receipt of LICENSOR's approval for the attachment, the payment shall be the applicable annual per pole sum calculated under Article III, paragraph (a) above.

(c) After making attachment to poles of LICENSOR, LICENSEE shall notify LICENSOR of the location of each attachment and any changes to the original application as set forth on the Notification of Attachment by LICENSEE Form attached as Exhibit B.

(d) LICENSEE shall be in compliance with any applicable ordinances, rules, regulations and laws presently in effect or that hereafter may be adopted or enacted by LICENSOR'S Municipal or State legislative body.

ARTICLE V

SPECIFICATIONS

LICENSEE's attachments on LICENSOR's poles shall be placed and maintained in accordance with provisions of the edition of the National Electrical Safety Code, and all subsequent amendments or revisions of said code, and in compliance with any applicable rules, orders, regulations, ordinances and laws now in effect or that hereafter may be adopted or enacted by LICENSOR's municipal legislative body, the New Mexico Public Regulatory Commission, any Federal, State, local or other governmental agency, or other authority having jurisdiction, and the reasonable rules and practices of LICENSOR set forth in this Agreement. Changes in rules and practices shall not be retroactive to those attachments that were placed prior to the change that met the rules and practices in effect at the time. Those attachments placed prior to changes in rules shall be brought into compliance at the time of their replacement, relocation, or rearrangement.

ARTICLE VI

PLACING AND MAINTAINING ATTACHMENTS

(a) LICENSEE shall, at its own expense, place and maintain its attachments in safe condition and thorough repair, so as not to conflict with the use of poles by LICENSOR for its core utility service (power transmission and delivery, fiber communications and municipal telephone) or other users, or interfere with the construction, operation, maintenance or removal of facilities thereon. LICENSEE shall take all necessary precautions, by the installation of protective equipment or other means, to protect all persons and property against injury or damages occurring by reason of LICENSEE's attachments on LICENSOR's poles.

(b) LICENSEE shall within thirty (30) days, at its own expense, upon notice from LICENSOR, relocate, replace or renew its attachments placed on the poles, and transfer them to substitute poles, or perform any other work in connection with the facilities that may be reasonably required by LICENSOR for its core service needs. In the event that third-party joint pole users not subject to this Agreement whose attachments are located above Licensee's shall have equipment attached to Licensor's poles, Licensee's thirty (30) day period to transfer its Attachment shall not commence until Licensee receives notice from Licensor that the third-party attachments above Licensee have been moved. In the case of an emergency, LICENSOR may arrange to relocate, replace or renew the attachments placed on the poles by LICENSEE, transfer them to substituted poles, or perform other work in connection with the attachments that may be required in the maintenance, removal, replacement or relocation of its poles, the attachments to the poles, or the service needs of LICENSOR. LICENSEE shall, on demand, reimburse LICENSOR for the expenses incurred.

(c) LICENSEE shall not place any additional equipment or change the position of any of its attachments upon any pole used by it hereunder without first making application therefore and receiving LICENSOR's approval so to do, all as prescribed in Article IV hereof.

(d) LICENSEE shall remove, relocate or place underground its facilities at its own expense if the LICENSOR removes or replaces an existing overhead line underground. In the instance the LICENSOR is replacing existing overhead facility(s) underground as a municipal beautification or enhancement project, LICENSOR shall notify LICENSEE a minimum of 120 days prior to project start and supply trenching and install conduit for the Licensee's trunk line and or fiber facilities under the direction of the Licensee's local engineer or systems planner.

ARTICLE VII

ALTERATIONS FOR LICENSEE'S ATTACHMENTS

(a) In the event that any pole of LICENSOR to which LICENSEE desires to make attachments, in the judgment of LICENSOR, requires rearrangement to support, or accommodate the additional attachments of LICENSEE, LICENSOR shall indicate on Exhibit A the changes it believes are necessary to provide adequate pole space and the estimated cost to LICENSEE. LICENSEE agrees to pay LICENSOR the cost of replacing any pole that is inadequate to accommodate LICENSEE's attachments, as well as the cost of transferring attachments from the old to the replacement poles. LICENSEE also agrees to pay LICENSOR the cost of rearranging attachments on an existing pole to accommodate LICENSEE's attachments, including the cost of strengthening or guying. LICENSEE shall pay LICENSOR upon the completion of the replacement of inadequate poles or rearrangement of its facilities, as billed by the LICENSOR. LICENSEE also agrees to pay the owner or owners of other attachments on said poles the cost of transferring or rearranging such attachments to accommodate LICENSEE's attachments. LICENSEE shall agree with other owners of facilities attached to said poles as to the payment to be made to such owners.

(b) In the event LICENSOR installs a new pole in its assigned service area and in order to provide space or strength to accommodate LICENSEE's attachments must install a stronger or taller pole, the cost of providing a pole of extra height or strength shall be paid by LICENSEE. Such cost shall include the difference between the cost of installing the new pole and the cost of installing a pole LICENSOR considers adequate for LICENSOR's attachments and of its other LICENSEE's. The new pole shall be the property of LICENSOR regardless of any payments by LICENSEE toward its cost and LICENSEE shall acquire no right, title or interest in such pole. The LICENSOR standard pole installed in rural areas is a 35' class 4 and a 40' class 4 in metropolitan areas.

(c) Because LICENSOR provides an essential service to the public, it reserves the right to make periodic inspections of LICENSEE's attachments to make certain that there is no impairment to its ability to provide electricity or fiber communications to its customers and LICENSEE shall pay LICENSOR the reasonable costs of such inspections. If such inspection finds that any of LICENSEE's attachments do not conform to requirements, specifications, rules, and regulations specified herein, subject to the provisions of the following sentence. LICENSOR shall not make such inspections more often than once every three years and upon notice to LICENSEE unless, in LICENSOR's judgment, such inspections are required for reasons involving safety, maintenance of service or where LICENSOR reasonably believes LICENSEE is violating the terms of this Agreement. The making of such inspections or the

failure to do so shall not relieve LICENSEE of any responsibility, obligation or liability assumed under this Agreement.

(d) If LICENSEE's attachments are found on a pole for which no permit has been obtained, LICENSOR may (1) impose a charge of \$150.00 (one hundred fifty dollars) plus five (5) years attachment fees as condition to such attachments remaining on the pole, or (2) require LICENSEE to remove such attachments. If LICENSEE fails to pay the charge or to remove the attachments, LICENSOR may remove the attachments and the expense of removal shall be borne by LICENSEE. For the purpose of determining the charge, an unauthorized attachment shall be treated as having existed for a period of five (5) years prior to its discovery; and the charge, computed at the applicable yearly rate per pole at the time of discovery plus \$150.00 (one hundred fifty dollars) and five (5) years, shall be due and payable immediately. Any such charge imposed by LICENSOR shall be in addition to its rights to any other sums due and payable and to any claims or damages under this Agreement or otherwise. As of the effective date of this Agreement, all existing attachments of LICENSEE shall be deemed authorized under Section VII.

ARTICLE VIII

LICENSOR'S RIGHTS AND SERVICE RESPONSIBILITIES

LICENSOR reserves to itself, its successors and assigns, the right to maintain its poles and to operate its facilities thereon in such a manner as will best enable it to fulfill its own service requirements and responsibilities. LICENSOR shall not be liable to LICENSEE for any interruption to service of LICENSEE or for interference with the operation of the attachments of LICENSEE arising in any manner out of the use of LICENSOR's poles. Nothing in this Agreement shall be construed to obligate LICENSOR to grant LICENSEE permission to use any particular pole or poles, and whenever LICENSOR notifies LICENSEE in writing to remove its attachments from LICENSOR's pole or poles, the LICENSEE shall within thirty (30) days after the date of such notice, remove its attachments from said pole or poles.

ARTICLE IX

RIGHTS-OF-WAY AND PERMITS FOR LICENSEE'S ATTACHMENTS

(a) Nothing in this Agreement shall be construed as a warranty or guarantee of permission from owners of private property, municipal or other governmental authorities, or other users, for LICENSEE to place or maintain its attachments upon the poles of LICENSOR. LICENSEE shall secure any required consents, permits or other appropriate authorization from such owners, users, or governmental authorities and shall furnish to LICENSOR evidence of the procurement of such authorizations with Exhibit "A" application and permit

(b) Upon notice from LICENSOR to LICENSEE that the use of any pole is forbidden by municipal authorities or property owners, the permit covering the use of such pole shall immediately terminate and LICENSEE's attachments shall be removed immediately at the expense of LICENSEE.

ARTICLE X

LIABILITY AND DAMAGE RESPONSIBILITIES

(a) LICENSEE shall exercise all reasonable precautions to avoid damage to facilities of LICENSOR and other authorized users of LICENSOR's poles and hereby assumes all responsibility for any and all loss for such damage caused by the LICENSEE or by any of its employees.

(b) LICENSEE hereby releases and discharges the LICENSOR from any and all liability for loss of or damage to the attachments of LICENSEE and for any detrimental effect upon, interruption to or failure of the service rendered by LICENSEE whether or not due in whole or in part to any act, omission, or negligence of LICENSOR or any of its representatives, agents, or employees.

(c) Throughout the term of this Agreement, LICENSEE shall maintain in full force and effect with a carrier or carriers selected by LICENSEE the following insurance:

- (1) Worker's compensation insurance in compliance with the laws of the State of New Mexico;
- (2) Bodily injury liability insurance, with limits of not less than \$500,000 as to any one person and \$1,000,000 as to any one accident or occurrence; and
- (3) Property damage liability insurance with limits of not less than \$500,000 for damage to the property of any one person and \$500,000 for each accident or occurrence.
- (4) An umbrella policy in favor of the LICENSOR in the amount of \$1,000,000.

The insurance described above also shall provide contractual liability coverage with respect to liability assumed by LICENSEE under Article XI. The LICENSOR shall be named as an additional insured with respect to bodily injury and property damage insurance. LICENSEE shall submit to LICENSOR certificates by each insurance carrier addressed to LICENSOR showing the effectiveness of insurance in accordance with this Agreement and containing a provision that the insurance carrier will not cancel or change any policy of insurance issued

pursuant to this Agreement except by written notice to LICENSOR served by certified mail stating the effective date of the cancellation or change, which effective date of cancellation or change shall not be less than thirty (30) days after receipt of such notice by LICENSOR.

ARTICLE XI

INDEMNIFICATION

(a) LICENSEE agrees to indemnify and save harmless LICENSOR, its representatives, agents, employees, successors and assigns, against and from any and all claims, demands, causes of action, damages, liabilities, costs (including without limitation reasonable attorneys' fees) and expenses, directly or indirectly resulting from or caused by: (1) the installation maintenance, use or removal of LICENSEE's equipment, including without limitation, those based upon LICENSEE's failure to secure any required consents, permits or authorization from the owners of private property, other users, or governmental authorities to maintain its attachments on LICENSOR's poles; (2) any act, omission, or negligence of LICENSEE, or any of its representative, agents or employees; (3) any detrimental effect upon, interruption, discontinuance, or interference with LICENSEE's service occasioned by any action by LICENSOR or any other user.

(b) The above and foregoing indemnities shall apply with respect to any and all claims, demands, causes of action, damages, liabilities, costs and expenses, except to the extent caused by the negligence of LICENSOR or any of its representatives, agents or employees.

(c) LICENSEE shall, upon demand and at its own risk and expense, defend any and all such suits, actions or other legal proceedings which may be brought or instituted against LICENSOR, its successors or assigns, on any such claim, demand, or cause of action; and shall pay and satisfy any judgment or decree which may be rendered against LICENSOR, its successors or assigns.

(d) LICENSOR shall promptly notify LICENSEE in writing of any claim under this Article XI and shall cooperate with LICENSEE with respect to the settlement and/or defense of or to such claims.

ARTICLE XII

REMOVAL OF LICENSEE'S ATTACHMENTS

(a) LICENSOR reserves the right, without liability to LICENSEE or its customers, to discontinue the use of, remove, replace or change the location of any of its poles regardless of LICENSEE's use of said poles and LICENSEE shall at its sole cost and within one hundred twenty (120) days after written notice by LICENSOR, remove its attachments as shall be required by LICENSOR.

(b) Upon notice from LICENSOR to LICENSEE that the use of any pole or poles by LICENSEE is unauthorized or illegal, the permit insofar as it covers the use of such pole or poles

shall immediately terminate and LICENSEE shall remove its attachments from such pole or poles.

(c) LICENSEE may at any time remove its attachments from any pole or poles of LICENSOR, but shall immediately give LICENSOR written notice of such removal in the form of the attached Exhibit C.

ARTICLE XIII

ASSIGNMENT OF RIGHTS

(a) LICENSEE shall not assign, sell, lease or in any manner transfer any of the rights granted to it by this Agreement, without prior consent in writing of LICENSOR. The attempted assignment, transfer, lease or sale by LICENSEE of any of the rights hereby granted without written consent of LICENSOR shall constitute a breach of this Agreement by LICENSEE, subject to the remedies set forth in Article XIV. Notwithstanding anything to the contrary herein, LICENSEE may assign this Agreement without the necessity of obtaining LICENSOR'S consent, to any person acquiring all or substantially all of LICENSEE'S assets or stock; provided that such assignee has been duly authorized by the City of Aztec to provide the services described hereunder and provided further that LICENSEE shall notify LICENSOR in writing, within thirty (30) days of such assignment.

(b) The terms and provisions of this Agreement shall be binding upon and extend to and inure to the benefit of the successors, assigns and contractors and/or subcontractors of the LICENSEE.

ARTICLE XIV

DEFAULTS AND REMEDIES

(a) If LICENSEE fails to comply with any of the provisions of this Agreement or is in default in any of its obligations under this Agreement and shall fail thirty (30) days after written notice from LICENSOR to notify LICENSOR of its intention to comply with such provisions and/or correct such default and if LICENSEE fails to correct such default or noncompliance within sixty (60) days after said notice by the LICENSOR to the LICENSEE, LICENSOR may, at its option, terminate this Agreement or terminate the permit covering the pole or poles as to which such default or noncompliance shall have occurred. Notwithstanding the foregoing, in such cases where a default cannot be cured within the specified period by the exercise of diligent, commercially reasonable effort, Licensee shall have an additional sixty (60) days within which to cure the defaults, giving Licensee a total of One hundred twenty (120) days from the date that Licensor provided its notice of default. In the event that LICENSOR terminates this Agreement, in writing and in entirety, LICENSEE shall have seven hundred twenty (720) days within which to remove its attachments, and in the event that LICENSEE does not remove its attachments within said period, LICENSOR may do so, the removal cost to be borne, in any event by LICENSEE or the attachments and infrastructure become property of LICENSOR.

(b) The rights and privileges by LICENSEE hereby granted shall not pass to any trustee, receiver, or assignee for the benefit of creditors of LICENSEE or be otherwise transferable by operation of law. This Agreement shall terminate, at LICENSOR's election, in the event of the liquidation or involuntary dissolution of LICENSEE, or in the event LICENSEE is adjudicated as bankrupt or insolvent, or if a receiver for LICENSEE's property is appointed and such receiver is not discharged or such appointment revoked within thirty (30) days after the date of the appointment of such receiver. LICENSOR may terminate this Agreement by thirty (30) days written notice to LICENSEE upon the happening of any one or more of the following events, to-wit:

- (1) The making by LICENSOR of any assignment for the benefit of creditors;
- (2) The taking of any action for the voluntary dissolution of LICENSEE;
- (3) The filing by LICENSEE of a voluntary petition in bankruptcy;
- (4) The appointment of a receiver for the LICENSEE.

(c) In the event either party shall be required to resort to litigation for the purpose of enforcing its rights under this Agreement, the judgment resulting from such litigation shall include an allowance for court costs and reasonable attorneys' fees, paid or incurred in connection with such litigation, unless such litigation has been compromised or settled and unless otherwise ordered or provided in the judgment or decree terminating such litigation.

(d) All rights and remedies hereby enumerated shall be cumulative and the enumeration of specific rights and remedies shall not preclude the exercise or prosecution of any other right or remedy afforded by law, and such rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises.

ARTICLE XV

ENFORCEMENT

Failure by LICENSOR to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any terms or conditions.

ARTICLE XVI

RIGHTS OF OTHER USERS

This Agreement shall not be construed as affecting the rights or privileges previously conferred by LICENSOR, by contract or otherwise, to others not parties to this Agreement, to use any poles covered by this Agreement; and LICENSOR shall have the right to continue and extend such rights and privileges. This Agreement shall not be construed as affecting or limiting the

rights of LICENSOR to make other and additional contracts with other persons, firms, or corporations for the joint use or rental of LICENSOR's poles and facilities.

ARTICLE XVII

PAYMENT OF STATEMENTS

Statements for expenses and other charges under this Agreement, including without limitation, amounts due under Article III, shall be paid within forty-five (45) days after presentation. Nonpayment of statements shall constitute a default of this Agreement if not paid within ten (10) days after written notice of such nonpayment by LICENSOR to LICENSEE and/or the guarantor herein.

ARTICLE XVIII

IDENTIFICATION OF LICENSEE'S EMPLOYEES

In furtherance of the purpose of the laws, rules and regulations relating to sabotage, espionage and subversive activities, LICENSEE shall identify each of its employees and agents accessing LICENSOR's poles and will require its contractors to have suitable means of identification as to their employees, who will have occasion to perform work on or about LICENSOR's poles, wires and other facilities.

XIX

FORCE MAJEURE

Neither LICENSOR nor LICENSEE shall be liable for any delay or failure to perform its obligations under this Agreement, other than the payment of money, in the event of a Force Majeure occurrence. Force Majeure as used herein, shall include, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; absence of necessary orders and permits of any kind which have been properly applied for; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; sabotage; injunction; blight; famine; blockade; quarantine; or any other similar cause or event not reasonably within the control of the party claiming the Force Majeure.

ARTICLE XX

PREVENTION AND SATISFACTION OF LIENS

LICENSEE agrees that no lien shall attach to the property of the LICENSOR. LICENSEE, its subcontractors and the servants, agents and employees of LICENSEE and its subcontractors shall not file, assert or prosecute any mechanic's or material man's liens against LICENSOR or its property. LICENSEE, its subcontractors and the servants, agents and

employees of LICENSEE and its subcontractors also shall not permit any mechanic's or material man's liens to be filed assigned or prosecuted against LICENSOR or its property.

ARTICLE XXI

NOTICES

Any notices required or permitted pursuant to this Agreement shall be given by registered or certified mail with return receipt requested, addressed to City of Aztec, attention Electric Director, 201 West Chaco, Aztec, NM 87410 and to LICENSEE at:

Comcast Cablevision of New Mexico/Pennsylvania, LLC

Attention: Chris Dunkeson, Vice President
8440 Washington St NE, Suite B
Albuquerque, NM 87113

With a copy to:

Comcast Cablevision of New Mexico/Pennsylvania, LLC

1500 Market Street
Philadelphia, PA 19102
Attention: Law Department

Either party may by like written notice at any time and from time to time designate a different address to which notices shall subsequently be transmitted to it.

ARTICLE XXII

CONTRACTING

The LICENSEE shall, as soon as practical after the execution of this Agreement, notify the LICENSOR in writing of the names of any contractors or subcontractors which the LICENSEE proposes for any or various portions of the work to be performed in attaching LICENSEE's attachments to LICENSOR's poles. The LICENSEE shall be fully responsible under the provisions of Article X to LICENSOR for the acts or omissions of its contractors and/or subcontractors and of the persons directly or indirectly employed by them.

ARTICLE XXIII

LICENSEE'S COMPLIANCE WITH ORDINANCES, LAWS, RULES AND REGULATIONS

The LICENSEE in the performance of its service and in exercising the rights granted under any license issued to the LICENSEE by the LICENSOR under this Agreement shall at all times comply with all applicable ordinances, laws, rules and regulations of any and all

governmental authorities having jurisdiction in the premises and shall exercise such rights for lawful communication purposes only.

IN WITNESS WHEREOF, this Agreement has been executed by duly authorized representatives of the Parties.

“LICENSOR”

Attest: CITY OF AZTEC

By _____
Mayor, City of Aztec

By: _____
City Clerk

“LICENSEE”

Attest: Comcast Cablevision of New Mexico/Pennsylvania, LLC

By:  _____
Chris Dunkeson, Vice President

EXHIBIT A

PERMIT NO. APPLICATION AND PERMIT

TO: City of Aztec
Attention: Electric Director
201 West Chaco
Aztec, NM 87410

In accordance with the terms of the Pole Attachment License Agreement, dated _____, 20____, _____ hereby applies for a permit to make attachments to the poles identified below. _____ has obtained all necessary consents or permits from private property owners and governmental authorities in accordance with Article IX of the Pole Attachment License Agreement.

LOCATION

(Street Name(s))

No. Poles Attached _____

Aztec Electric Pole ID #'s

By
Title

Licensee

Permit granted _____, 20____, place the above described attachment(s) on the identified pole(s), subject to LICENSEE's acceptance of any changes or rearrangements detailed on the attached sheet, at an estimated cost of \$_____ for LICENSOR's rearrangements. Acceptance should be indicated on this form and returned to LICENSOR within sixty (60) days from the date hereof, failing which the permission hereby granted shall automatically be revoked.

CITY OF AZTEC

By _____
Title _____
LICENSOR

TO: City of Aztec
Attention: Electric Director
201 West Chaco
Aztec, NM 87410

The above-mentioned changes and rearrangements are accepted by the Licensee on _____, _____, and the costs thereof will be paid to LICENSOR in accordance with Article VI of the Pole Attachment License Agreement.

By _____
Title _____
LICENSEE

NOTICE NO. _____

EXHIBIT B

NOTIFICATION OF ATTACHMENT BY LICENSEE

_____, 20____

TO: City of Aztec
Attention: Electric Director
201 West Chaco
Aztec, NM 87410

In accordance with the terms of Pole Attachment License Agreement, dated _____, 20____, pole attachment information is shown below:

Location _____
(Street Name)

Total Poles Attached _____

Comcast Cablevision of New Mexico/Pennsylvania, LLC

By _____
Title _____
Licensee

Notice Acknowledged
_____, 20____.

CITY OF AZTEC

By _____
Title _____
Licensor
NOTICE NO. _____

EXHIBIT C

NOTIFICATION OF REMOVAL BY LICENSEE

_____, 20____

TO: City of Aztec
Attention: Electric Director
201 West Chaco
Aztec, NM 87410

In accordance with the terms of Pole Attachment License Agreement, dated _____, 20____, please cancel the Permit for the following pole(s) from which attachment(s) were removed on _____, 20____.

Location _____
(Street Name)

Total Poles Discontinued _____

Comcast Cablevision of New Mexico/Pennsylvania, LLC

By _____ Title _____
Licensee

Notice Acknowledged
_____, 20____

CITY OF AZTEC

By _____
Title _____
Licensor

Staff Summary Report

MEETING DATE: March 12, 2019
AGENDA ITEM: X. CONSENT AGENDA (G)
AGENDA TITLE: Special Budget Resolution Capital Projects Fund 2019-1122

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

PROJECT DESCRIPTION / FACTS

NM DFA: New Mexico Department of Finance and Administration

- The Aztec Public Library was constructed with a capital loan from New Mexico Finance Authority (NMFA). The loan was established in 2004 for 15 years (first payment in 2005, pay off scheduled for May 2020) and required a debt reserve account equal to one annual payment.
- Rather than continuing the loan for an additional 18 months until scheduled payoff, inquires to NMFA permitted the use of the reserve funds to pay off the loan in February 2019.
- The early pay off reduced costs in the Capital Project Fund in the amount of \$23,782, reduced interest earnings on the debt reserve by \$4,629 (estimated through April 2020), for a net savings of \$19,153.
- A budget resolution is necessary to increase budgeted funds available for the debt payment. There is net zero impact to the fund balance due to the use of the debt reserve funds.
- The budget adjustment includes:

<i>Description</i>	<i>City Account Number</i>	<i>LGBMS Acct Number</i>	<i>Budget Increase</i>
Cash Reserve – Debt Reserve PP1652 Library	310-11321	30500-0001-10102	(\$152,846)
Principal, NMFA 2004 Library	310-6490-69810	30500-4003-59010	\$152,846

SUPPORT DOCUMENTS: Resolution 2019-1122

DEPARTMENT’S RECOMMENDED MOTION: Move to Approve Special Budget Resolution 2019-1122

**Resolution 2019-1122
State Of New Mexico, City Of Aztec
2018-2019 SPECIAL BUDGET ADJUSTMENT, 105th FISCAL YEAR**

WHEREAS, the Governing body in and for the City of Aztec, State of New Mexico has developed needs to adjust the current approved budget for fiscal year 2018-2019, and

WHEREAS, the City constructed the Aztec Public Library through loan proceeds from New Mexico Finance Authority (NMFA) which required a set aside of Debt Reserve funds; and

WHEREAS, the Debt Reserve funds are sufficient to allow the early pay off of loan PP-1652; and

WHEREAS, the Capital Projects Fund will be adjusted as follows, and

<u>Description</u>	<u>City Account Number</u>	<u>LGBMS Acct Number</u>	<u>Budget Increase</u>
Cash Reserve – Debt Reserve PP1652 Library	310-11321	30500-0001-10102	(\$152,846)
Principal, NMFA 2004 Library	310-6490-69810	30500-4003-59010	152,846

WHEREAS, the official meeting for the review of this special budget resolution was duly advertised on January 22, 2019, Resolution 2019-1114, and March 12, 2019, Commission Meeting Agenda, in compliance with the State Open Meetings act, and

WHEREAS, it is the majority opinion of this Commission that the adjusted budget meets the requirements as currently determined for fiscal year 2018-2019,

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Governing Body of the City of Aztec, State of New Mexico, hereby adopts the budget adjustment herein above described and respectfully requests approval from the Local Government Division of the Department of Finance of Administration.

RESOLVED: In session this 12th day of March, 2019.

MUNICIPAL GOVERNING BOARD AZTEC, NEW MEXICO

Mayor Victor C. Snover

Mayor Pro-Tem Rosalyn A Fry

Commissioner Mark E. Lewis

Commissioner Austin R. Randall

Commissioner Sherri A. Sipe

ATTEST:

Karla Sayler, City Clerk

Staff Summary Report

MEETING DATE: March 12, 2019
AGENDA ITEM: X. CONSENT AGENDA (H)
AGENDA TITLE: Legal Services Agreement between City of Aztec and Gallagher & Kennedy P.A.

ACTION REQUESTED BY: City Manager, Finance Department
ACTION REQUESTED: Approval
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- Municipalities and Counties in the state have, for several years, had concerns regarding NM Taxation & Revenue Department's (NMTRD) procedures specific to gross receipts tax distributions.
- Gallagher and Kennedy P.A. has been working with the New Mexico Municipal League and the New Mexico Association of Counties to develop information on amounts unlawfully withheld from distributions and transfers of gross receipts tax revenue.
- The City of Albuquerque retained the services of Gallagher and Kennedy P.A. to file a lawsuit against NMTRD. The initial Complaint was filed on behalf of the Cities of Albuquerque, Artesia, Farmington and Moriarty in Bernalillo County in the Second Judicial District. One amendment has been filed to add additional participating cities and counties and additional amendment(s) are anticipated to be filed as cities and counties elect to join the lawsuit.
- The agreement includes a Contingency Fee Structure (Item 3 of the attached agreement) which was developed in consultation with City of Albuquerque and NMML. Although, the Contingency Fee structure provides for payment of legal fees only out of a recovery by an individual municipality or county, it requires all participating municipalities and counties to share costs of the lawsuit, with costs to be borne by any municipality or county to not exceed the current procurement dollar limitation applicable to the participating cities and counties.
- The City's procurement limit for professional services is \$60,000 and the agreement may not exceed a term of four years. An agreement exceeding this amount requires formal procurement. The agreement requires the City Commission to make an appropriation up to the amount of the cap identified in item 3.E.

PROCUREMENT

- None

FISCAL IMPACTS

- A budget resolution will be prepared for City Commission approval at the next regular meeting if this agreement is approved.

SUPPORT DOCUMENTS: Legal Services Agreement between City of Aztec and Gallaher & Kennedy, P.A.

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Legal Services Agreement between City of Aztec and Gallaher & Kennedy, P.A.

**CITY OF AZTEC
LEGAL SERVICES AGREEMENT
BETWEEN
GALLAGHER & KENNEDY, P.A.
AND THE CITY OF AZTEC**

THIS AGREEMENT is made and entered into this ____ day of March, 2019 by and between the City of Aztec, New Mexico, a municipal corporation (hereinafter referred to as the "City"), and Gallagher & Kennedy, P.A., whose address is 1239 Paseo de Peralta, Santa Fe, New Mexico 87501 (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the City desires to engage the Contractor to render legal services for the term of this Agreement and the Contractor is willing to provide such services; and

WHEREAS, the City intends that the Contractor will act on behalf of and in service to the City in an official capacity.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **Scope of Services.** The Contractor shall provide the following legal representation and other legal services (hereinafter the "Services") in conjunction and association with the City Attorney in the following case:

Assist the City in its claims for recovery of sums from the State of New Mexico, Taxation and Revenue Department, for unlawful reductions of distributions and transfers of gross receipts tax revenue collected by the State on behalf of the City.

2. **Time of Performance.** Services of the Contractor shall commence upon execution of this Agreement and shall continue through June 30, 2020. The Services shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement.

3. **Contingent Fee Structure and Costs.** For purposes of this Agreement "Amounts Recovered" or "Recovery" means all sums the City receives from the State of New Mexico as a result of the Contractor's representation of the City in this matter. The Contractor's Contingency Fee in this matter will be as follows:

A. Contingent Fee if Recovery Obtained by Alternative Dispute Resolution. If defendants agree to or are required to enter into alternative dispute resolution through mediation, arbitration, or an administrative process within one (1) year from the date that an action is filed, and the matter is resolved and Contractor receives payment of its fee within twenty-four (24) months from the date that the action is filed, then the Contractor will receive a contingent fee equal to ten percent (10%) of all Amounts Recovered by the City up to four million dollars (\$4,000,000.00). The Contractor shall receive three percent (3%) of only the Amounts Recovered by the City in excess of four million dollars (\$4,000,000.00). For example, if the total Recovery is five million dollars, the Contractor will receive ten percent of the first four million dollars of the Amount Recovered, *i.e.*, the first portion of the fee is four hundred thousand dollars, and the Contractor will receive three percent of the Amount Recovered over four million dollars, *i.e.*, three percent of the additional one million dollars, *i.e.*, the second portion of the fee is thirty thousand dollars, for a total fee of four hundred thirty thousand dollars.

B. Contingent Fee if Recovery Obtained Prior to the Commencement of Trial. If the conditions of paragraph A above do not apply and the City obtains a Recovery based upon resolution of the matter prior to the commencement of trial, then the contingent fee shall be twelve and one-half percent (12.5%) of all Amounts Recovered by the City up to four million dollars (\$4,000,000.00). In addition, the Contractor shall receive five percent (5%) of the Amounts Recovered over four million dollars (\$4,000,000.00). For example, if the total Recovery is five million dollars, the Contractor will receive twelve and one-half percent of the first four million dollars of the Amount Recovered, *i.e.*, the first portion of the fee is five hundred thousand dollars, and the Contractor will receive five percent of the Amount Recovered over four million dollars, *i.e.*, five percent of the additional one million dollars, *i.e.*, the second portion of the fee is fifty thousand dollars, for a total fee of five hundred fifty thousand dollars.

C. Contingent Fee for Recovery Obtained After Commencement of Trial. If the City obtains a Recovery based upon resolution of the matter after the commencement of a trial, then the Contractor will receive a contingent fee equal to fifteen percent (15%) of the Amounts Recovered for the City up to four million dollars (\$4,000,000.00). In addition, the Contractor shall receive ten percent (10%) of the Amounts Recovered over four million dollars (\$4,000,000.00). For example, if the total Recovery is five million dollars, the Contractor will receive fifteen percent of the first four million dollars of the Amount Recovered, *i.e.*, the first portion of the fee is six hundred thousand dollars, and the Contractor will receive ten percent of the Amount Recovered over four million dollars, *i.e.*, ten percent of the additional one million dollars, *i.e.*, the second portion of the fee is one hundred thousand dollars, for a total fee of seven hundred thousand dollars.

D. Fee in the Event of Class Action. If an action is certified as a class action or the fee to the Contractor is otherwise subject to the application to, review or and/or approval by the court, then the City agrees that the Contractor may apply for or otherwise seek approval of, and City will not object to, fees in amounts up to, but not exceeding, amounts based upon application of the applicable percentages stated above.

E. Costs. The City shall reimburse the Contractor for the costs of the action, including but not limited to expert witness fees, court filing and other fees, court reporter fees, and reasonable travel expenses consistent with the City's guidelines, but the amount of costs the City is obligated to pay shall be capped not to exceed sixty dollars (\$60,000.00). All such costs incurred and paid by the Contractor shall be billed to City on a monthly basis and paid by the City. No such costs shall be deducted from the amount of any Recovery for purposes of the determination of the Contractor's fees. If additional municipalities or counties join in the action, it shall be appropriate for all of the municipalities or counties who are part of the action to share certain costs. In that event, a cost-sharing agreement will be needed so that that the costs can be appropriately allocated to each party and the Contractor can bill and obtain reimbursement of each municipality's or county's share of such costs. In order to minimize out-of-pocket costs of the action, to the extent practicable, the City will provide reasonable support services, including internal analysis of information relating to the tax transactions and information obtained and used to determine the amounts due to the City.

F. Costs Exceeding Cap. The Contractor shall not bill the City for any costs it incurs that are attributable to the City that exceed sixty thousand dollars (\$60,000.00).

G. Costs for New Mexico Municipal League. The New Mexico Municipal League (NMML), on behalf of its members including the City, has incurred certain costs and fees to develop the information needed to pursue these claims. In order to use this information, the City may enter into an agreement with the NMML for reimbursement of a portion of such costs and fees. If such reimbursement is deducted from any Recovery obtained by the City, then for purposes of calculating the Contractor's fee, such amount will not be deducted from the amount of the Recovery.

H. Additional Municipalities and Counties as Parties. The City reserves the right to permit additional municipalities or counties to join in the action to be filed by Contractor on behalf of City, provided that as a condition of joining the action, any municipality or county that joins shall be required to agree to pay its reasonable share of costs. The City will not unreasonably withhold permission for additional municipalities and counties to join.

I. Fees if Non-Monetary Recovery. The City and the Contractor contemplate that a possible basis for compromise and settlement of this matter could include prospective benefits that might not consist of payments that would constitute a Recovery as defined above, such as legislation changing the future limitations on reductions or adjustments to distributions and transfers of gross receipts tax revenue to City in consideration for the City's agreement to compromise its claims for sums due to past actions by the State. In the event of such a compromise that would achieve a benefit for the City that is reasonably related to the Contractor's representation of the City, and which substantially diminishes the City's Recovery and the amount of the fee due to the Contractor as provided above, the City and the Contractor agree to negotiate reasonable

compensation to the Contractor for the prospective benefits. In determining the fee due, the parties shall consider the amount of revenue to the City that will be derived from the prospective benefits, the amount of the contingent fee that would have been derived applying the percentages above to the prospective benefits received by the City over a five year period after the settlement, and the amount of the fee that would have been earned based upon the time spent by the Contractor timekeepers on the matter at the Contractor's standard rates multiplied by 1.5, in consideration of the Contractor's acceptance of representation on a contingent fee basis. For purposes of this paragraph, the amount of the Recovery with respect to prospective benefits shall be based on the net present value of the City's prospective benefits.

J. Gross Receipts Taxes. Any applicable gross receipts taxes shall be computed and added to the fee due to the Contractor under this Agreement.

K. Fee Arbitration. Any dispute regarding fees under this Agreement shall be resolved through the State Bar of New Mexico Fee Arbitration program.

L. Appropriations. Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the City Commission of the City making the appropriations necessary for the payment of costs of the action up to the cap amount of \$60,000.00 (Sixty Thousand Dollars). If sufficient appropriations and authorizations are not made by the City Commission, the City's agreement to reimburse Contractor for costs may be terminated at the end of the City's then current fiscal year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

4. Interest of Contractor.

A. The Contractor agrees that it presently has no direct or indirect interest and shall not acquire any direct or indirect interest which conflicts in any manner or degree with the performance of the Services required to be performed under this Agreement. The Contractor further agrees that no person having any such conflict of interest will be employed to perform the Services.

B. The Contractor hereby agrees to report to the City Attorney in writing, any situation in which the Contractor or a member of the Contractor's firm may be asserting a position contrary to that of the City. Such situations include but are not limited to instituting suit against the City, any of its employees or departments, regardless of whether a technical conflict exists under the Canons of Ethics or Disciplinary Rules or whether the subject matter of the litigation to be instituted is related to the Contractor's representation of the City under this Agreement.

Upon notification of such a conflict, the City Attorney will inform the Contractor in

writing within ten (10) days of receipt of the notification that the City will or declines to waive the potential conflict. If the conflict is waived, the Contractor or firm may proceed with representation in the conflict situation, informing the City Attorney should any relevant change of circumstances occur. If waiver of the conflict is denied, the Contractor is obligated under the provisions of this Agreement to cease its efforts in the conflict situation.

If the Contractor refuses to cease representation, or if the Contractor fails to notify the City of potential conflict, the City may terminate this Agreement upon one (1) day's notice. The Contractor agrees to compensate the City for any costs incurred by the City to obtain alternate representation, including but not limited to the cost of paying substitute counsel to become familiar with the case to a level at which the Contractor withdrew from representation and attorneys' fees incurred by the City in obtaining the assistance of alternate counsel.

The City is entitled to withhold payment of the final billing submitted by the Contractor to cover the cost of obtaining substitute representation, as provided above. After securing alternate counsel, the City will provide a summary of costs incurred by this counsel and will pay any applicable amounts remaining due to the Contractor.

5. Records, Pleadings, and Case File. Records, pleadings, legal research, and the case file shall be sent to the City Attorney at the conclusion of the case. Highly confidential documents such as attorney notes and client correspondence need not be returned.

6. Reports Required. The Contractor will keep a record of the time spent by each of its timekeepers, including a description of tasks performed, and will provide that record to the City along with its monthly statement for any costs of the action. The Contractor's initial record shall include time spent developing the cases prior to entering into a contract with the City, and the recorded time may differentiate between time attributable to work on behalf of only the City and time not attributable to any particular municipality or county. Within thirty (30) days after entering into this Agreement, the Contractor will provide the City Attorney with a brief analysis of the task to be undertaken and a plan for performing the tasks under the Agreement. With regard to the litigation, this will include an assessment of the relative merits of the parties' positions, and a litigation plan, including a proposed time schedule.

At the time of submission of any billing, the Contractor will also submit to the City Attorney an executive summary one to two page status report indicating the current status of the litigation or other project which is the subject of this Agreement, a brief summary of the activities undertaken for which the billing is being submitted, and a plan for future activities under the Agreement which the Contractor intends to perform during the next billing cycle.

7. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Finance Department, independent auditors, and State Auditor, upon demand, shall furnish any and all records relevant to this Agreement for auditing purposes. Records shall be maintained by the Contractor for a period of three (3) years from the date of final payment under this Agreement.

8. Pleadings. All documents submitted to the Court or opposing counsel shall be copied to the City Attorney. Pleadings other than routine pleadings, such as briefs and motions, will be submitted to the City Attorney for review and approval prior to filing. Failure to submit such pleadings to the City Attorney in advance of filing may constitute grounds for termination of the Agreement or for refusal to compensate the Contractor for all efforts expended in preparation of the pleading. A sample of the signature line for pleadings is:

CITY OF AZTEC:

J. Nicci Unsicker, City Attorney
Risley Law Firm PC
2705 Rabbitbrush
Farmington, New Mexico 87402
(505) 326-1776

CONTRACTOR:

Dalva L. Moellenberg
Anthony J. "T.J." Trujillo
Gene F. Creely, II
Gallagher & Kennedy, P.A.
1239 Paseo Del Peralta
Santa Fe, New Mexico 87501
(505) 982-9523

9. Renewals. Any continuation or renewal of this Agreement shall be the subject of further negotiations between the parties.

10. Termination by Parties. This Agreement may be terminated by either of the parties when required by law or upon fifteen (15) days' notice of termination, whichever occurs first, or substitution of counsel. Notice of termination does not nullify obligations already incurred on the part of either party for performance or failure to perform to the date of termination, subject to the limits on total payment to be made as set forth in Paragraph 3 of this Agreement and subject to the City's entry of substituted counsel as set forth in Paragraph 4.B.

11. Independent Contractors. The Contractor, its officers, employees and agents are independent contractors performing services for the City and are not employees of the City or its departments, agencies or instrumentalities. The Contractor, its officers, employees and agents, shall not, as a result of this Agreement, accrue any leave, retirement, insurance, bonding, use of City vehicles, or any other benefits available to employees of the City, its agencies or instrumentalities.

12. Assignment Prohibited. The Contractor shall not assign or transfer any interest in this Agreement nor assign any claims for money due or to become due under this Agreement without the City's prior written approval.

13. Subcontracting Prohibited. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the City's prior written approval.

14. Indemnity. The Contractor agrees to defend, indemnify and hold harmless the City, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from the performance of professional services for the City in the Contractor's capacity as attorney for the City, and caused by any error, omission, or negligent act of the Contractor or any person employed by the Contractor, or of any others for whose acts the Contractor is legally liable. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

15. Release from Liability. The Contractor, upon final payment of all amounts due under this Agreement, releases the City, its officers, employees and servants, the City, its departments, agencies, and instrumentalities from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

16. Insurance. The Contractor shall not commence work under this Agreement until any applicable insurance required in Exhibit A to this Agreement has been obtained and proper evidence of insurance has been submitted to the City.

17. Discrimination Prohibited. In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans with Disabilities Act of 1990, as currently enacted, or hereafter amended.

18. **ADA Compliance.** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans with Disabilities Act of 1990, and all applicable rules and regulations (the "ADA"), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

19. **Amendments.** This Agreement shall not be altered, changed, or amended except by written instrument executed by the parties hereto.

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

21. **Interpretation.** This Agreement shall be interpreted, construed, and governed in accordance with New Mexico law.

22. **Approval Required.** This Agreement shall not become effective or binding until all required signatures have been obtained.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF AZTEC:

CONTRACTOR:

Approved By:

Gallagher & Kennedy, P.A.

Victor C. Snover, Mayor

Dalva L. Moellenberg
Managing Shareholder

Date:_____

Date:_____

J. Nicci Unsicker, City Attorney

Date:_____

Kathleen A. Lamb, Finance Director/Chief
Procurement Officer

Date:_____

ATTEST:

Karla Sayler, City Clerk

Date:_____

EXHIBIT A

Insurance. The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Finance Director, City of Aztec, 201 W. Chaco, New Mexico 87410, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire - Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. Automobile Liability Insurance. An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

C. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico.

D. Professional Liability (Errors and Omissions) Insurance. Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.

E. Increased Limits. If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

Staff Summary Report

MEETING DATE:	March 12, 2019
AGENDA ITEM:	XII. Business Item (A)
AGENDA TITLE:	Final Adoption of Ordinance 2019-489 Amending Chapter 16, Division 3, Section 16-211 Solid Waste and Recycle Rates

ACTION REQUESTED BY:	City Staff
ACTION REQUESTED:	Approve Final Adoption of Ordinance 2019-489
SUMMARY BY:	City Staff

PROJECT DESCRIPTION / FACTS

- RFP 2019-672 Municipal Solid Waste Services was awarded to Waste Management of New Mexico during the regular commission meeting of January 22, 2019. Commission approval of the award directed staff to enter into contract negotiations with Waste Management.
- A workshop was held January 29, 2019 to discuss the solid waste and recycling programs in the City of Aztec.
- On February 12, 2019, City Commission approved the Intent to adopt Ordinance 2019-489 Amending Chapter 16, Division 3, Section 16-211 Solid Waste Rates. The option to begin residential and commercial curbside recycling on September 1, 2019 was also approved under the Intent to adopt Ordinance 2019-489 Amending Chapter 16, Division 3, Section 16-211 Solid Waste Rates.
- The agreement with Waste Management was approved by City Commission on February 18, 2019, effective March 1, 2019. The first billing to the City will in April for March services. The City will be responsible for the costs under the contract rate structure regardless of the status of a rate increase to utility customers. The monthly increase from current rates to new rates is estimated to be \$10,500 (does not include curb side recycling).
- The ordinance effective date will be March 22, 2019 for solid waste customers and will be included on the March 2019 customer billing. In this situation, the rate increase to customers would be the difference between the current rate structure and the new contract rate – for residential customers, this would be a minimum of \$3.47 (one polycart \$10.53/current rate to \$14.00/new rate).
- The rate ordinance will establish a recycle rate using the proposed rates provided by Waste Management of New Mexico. For residential customers, the recycle service will be mandatory and the rate will be assessed to all residential customers with a monthly charge of \$6.68 for once a month pickup of recyclables. Recycle service will begin September 1, 2019 and will be included on the September 2019 customer billing.

- A rate was added to Commercial Trash rates for 1.5 cubic yard container. A commercial customer had requested from a 1.5 yard from Waste Management of New Mexico. Previous 1.5 cubic yard container was not available.
- Additional fees have been added to the residential and commercial rates in the ordinance for extra pickups, additional bulky item pickup and cart replacement cost for lost, stolen or missing carts that will not be directly billed by Waste Management of NM and are included in the agreement.
- For commercial customers, Waste Management would work with the individual customer to determine the size of the receptacle and the additional monthly fee. Waste Management would directly bill all commercial recycling customers. With all direct bill customers the city would receive a 6% franchise fee from the amounts billed to customers.
- City staff will monitor the usage of the single stream recycling and debris containers at the convenience center. Until all services at the convenience center are terminated, the \$2.35 billed to solid waste customers, for those operations will continue to be necessary.
- The agreement allows for an annual CPI (Consumer Price Index) adjustment using the CPI-U, trash industry index. The provider must provide written notification before such adjustment will be assessed.
- Changes after the approval for the Intent to adopt Ordinance 2019-489 are noted in blue.

SUPPORT DOCUMENTS: Ordinance 2019-489

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve the Final Adoption of Ordinance 2019-489, Amending Chapter 16, Division 3, Section 16-211 Solid Waste and Recycle Rates. Solid Waste rates will be effective March 22, 2019 and Recycle Rates will be effective September 1, 2019.

**City of Aztec
Ordinance 2019-489
Amending Chapter 16, Section 16-211 Solid Waste and Recycle Rates**

WHEREAS, RFP 2019-672, Municipal Solid Waste Services, was approved by City Commission and was awarded to Waste Management of New Mexico;

WHEREAS, With the award of RFP 2019-672, current rates to solid waste service need to be increased;

WHEREAS, this amendment will establish curb-side recycle rates for future implementation of a residential curb-side recycling program.

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Aztec, New Mexico that Ordinance 2019-489 Amending Chapter 16, Section 16-211 Solid Waste and Recycle Rates be adopted as attached.

PASSED, APPROVED, SIGNED AND ADOPTED THIS 12th day of March 2019.
By the Aztec City Commission, City of Aztec, New Mexico

Mayor Victor C. Snover

ATTEST:

Karla Saylor, City Clerk CMC

APPROVE AS TO FORM:

City Attorney

Advertised Date of Final Adoption:

Effective Date of Ordinance:

DIVISION 4. SOLID WASTE AND RECYCLE FEES

Sec. 16-211. Solid Waste Rates.

1. Residential Trash Service.

(1) All single family residents, duplexes, and apartments. Each unit – Cart (1 x Week) –	\$10.53
(2) Extra Cart (1 x Week)	\$ 5.07
(3) All single family residents, duplexes, and apartments. Each unit – Cart (2 x Week)	\$18.64
(4) Extra Cart (2 x Week)	\$23.71
(1) All single family residents, duplexes, and apartments. Each unit – Cart (1 x Week)	\$ 14.00
(2) Extra Cart (1 x Week)	\$ 5.25
(3) Extra Pickup	\$ 25.90
(4) Additional Bulky Item Pickup (per service)	\$ 30.00
(5) Replacement of Lost, Stolen or Missing Cart (per container)	\$ 75.00

(Ord. 2018-476, eff. 2018-Jul-18)

2. Multi-Unit Residential Trash Service.

(1) All single family residents, duplexes, and apartments. Each unit – Cart (1 x Week) –	\$10.53
(2) Extra Cart	\$5.07
(3) All single family residents, duplexes, and apartments. Each unit – Cart (2 x Week)	\$18.64
(4) Extra Cart (2 x Week)	\$23.71
(1) All single family residents, duplexes, and apartments. Each unit – Cart (1 x Week)	\$ 14.00
(2) Extra Cart	\$ 5.25
(3) Extra Pickup	\$ 25.90
(4) Additional Bulky Item Pickup (per service)	\$30.00
(5) Replacement of Lost, Stolen or Missing cart (per container)	\$ 75.00

(Ord. 2018-476, eff. 2018-Jul-18)

3. Commercial Trash Service.

<i>Size</i>	<i>Frequency</i>					
	<i>1 x Week</i>	<i>2 x Week</i>	<i>3 x Week</i>	<i>4 x Week</i>	<i>5 x Week</i>	<i>6 x Week</i>
1 Cart	\$15.17	\$27.33	N/A	N/A	N/A	N/A

<i>Size</i>	<i>-Frequency</i>					
	<i>1 x Week</i>	<i>2 x Week</i>	<i>3 x Week</i>	<i>4 x Week</i>	<i>5 x Week</i>	<i>6 x Week</i>
2-Carts	\$30.34	\$54.67	N/A	N/A	N/A	N/A
2-Yard	\$66.23	\$104.23	\$142.20	\$180.12	\$218.18	\$255.49
3-Yard	\$76.94	\$120.04	\$192.67	\$250.57	\$308.48	\$366.36
4-Yard	\$91.93	\$140.70	\$211.99	\$272.04	\$332.11	\$392.11
6-Yard	\$120.50	\$178.94	\$265.92	\$338.83	\$411.23	\$481.35
8-Yard	\$160.69	\$219.76	\$313.96	\$390.54	\$467.22	\$543.86

<i>Size</i>	<i>Frequency</i>						
	<i>1 x Week</i>	<i>2 x Week</i>	<i>3 x Week</i>	<i>4 x Week</i>	<i>5 x Week</i>	<i>6 x Week</i>	<i>Extra Pickup</i>
1 Cart	\$ 18.75	\$ 37.50	N/A	N/A	N/A	N/A	\$ 34.69
Extra Cart	\$ 18.75	\$ 37.50	N/A	N/A	N/A	N/A	\$ 34.69
1.5 Yard	\$ 30.15	\$ 60.30	\$90.45	\$ 120.60	\$ 150.75	\$ 180.90	\$ 55.78
2 Yard	\$ 35.54	\$ 71.08	\$106.62	\$ 142.16	\$ 177.70	\$ 213.24	\$ 65.75
3 Yard	\$ 53.31	\$ 106.63	\$ 159.94	\$ 213.26	\$ 266.57	\$ 319.88	\$ 98.62
4 Yard	\$ 71.08	\$ 142.16	\$ 213.24	\$ 234.32	\$ 355.40	\$ 426.47	\$ 131.50
6 Yard	\$ 106.62	\$ 213.24	\$ 319.86	\$ 426.47	\$ 533.09	\$ 639.71	\$ 197.25
8 Yard	\$ 142.16	\$ 284.32	\$ 426.47	\$ 568.63	\$ 710.79	\$ 852.95	\$ 263.00

(Ord. 2018-476, eff. 2018-Jul-18)

4. City Facilities Trash Service

<i>Size</i>	<i>-Frequency</i>					
	<i>1 x Week</i>	<i>2 x Week</i>	<i>3 x Week</i>	<i>4 x Week</i>	<i>5 x Week</i>	<i>6 x Week</i>
-						
1-Cart	\$15.17	\$27.33	N/A	N/A	N/A	N/A
2-Carts	\$30.34	\$54.67	N/A	N/A	N/A	N/A
2-Yard	\$66.23	\$104.23	\$142.20	\$180.12	\$218.18	\$255.49
3-Yard	\$76.94	\$120.04	\$192.67	\$250.57	\$308.48	\$366.36
4-Yard	\$91.93	\$140.70	\$211.99	\$272.04	\$332.11	\$392.11
6-Yard	\$120.50	\$178.94	\$265.92	\$338.83	\$411.23	\$481.35
8-Yard	\$160.69	\$219.76	\$313.96	\$390.54	\$467.22	\$543.86
Roll-Off	Delivery	Exchange				
30-Yard	\$80.07	\$410.27				
40-Yard	\$80.07	\$480.40				
Treated Sludge Removal (Empty and Return Fee)						
20-Yard	\$405.40 plus fees					

Size	Frequency					
	1 x Week	2 x Week	3 x Week	4 x Week	5 x Week	6 x Week
1 Cart	\$ 18.75	\$ 37.50	N/A	N/A	N/A	N/A
Extra Cart	\$18.75	\$ 37.50	N/A	N/A	N/A	N/A
2 Yard	\$ 35.54	\$ 71.08	\$ 106.62	\$ 142.16	\$ 177.70	\$ 213.24
3 Yard	\$ 53.31	\$ 106.63	\$ 159.94	\$ 213.26	\$ 266.57	\$ 319.88
4 Yard	\$ 71.08	\$ 142.16	\$ 213.24	\$ 284.32	\$ 355.40	\$ 426.47
6 Yard	\$ 106.62	\$ 213.24	\$ 319.86	\$ 426.47	\$ 533.09	\$ 639.71
8 Yard	\$ 142.16	\$ 284.32	\$ 426.47	\$ 568.63	\$ 710.79	\$ 852.95
Roll-Off	Delivery	Exchange				
30 Yard	\$ 115.00	\$ 145.00	Plus \$ 34.90 per ton			
40 Yard	\$ 115.00	\$ 145.00	Plus \$ 34.90 per ton			
Treated Sludge Removal (Empty and Return Fee)						
20 Yard	\$ 225.00 plus \$ 34.90 per ton					
Single Stream Recycle Container						
30 Yard	\$ 145.00 plus \$ 195.00 per ton					

(Ord. 2018-476, eff. 2018-Jul-18; Ord. 2017-455, eff. 2017-Apr-05; Ord. 2008-359, eff. 2008-Oct-17)

5. Residential Curb Side Recycling Service

Effective start date September 1, 2019.

- (1) All single family residents, duplexes, and apartments.
Each unit – Cart (~~Bi-Monthly~~) Monthly \$7.46 \$ 6.68
- (2) Extra Cart (~~Bi-Monthly~~) Monthly \$7.46 \$ 6.68
- (3) Extra Pickup \$ 13.80

6. City Facilities Recycling Service

- (1) All single family residents, duplexes, and apartments.
Each unit – Cart (Bi-Monthly) \$ 11.10
- (2) Extra Cart (Bi-Monthly) \$ 11.10

7. Recycling Convenience Center

A monthly flat rate of \$ 2.35 will be charged to all solid waste customers for purposes of operating the ~~recycling~~ convenience center.

(Ord. 2017-465, eff. 2017-Oct-01)

8. CPI Adjustment

The solid waste and recycle rates will be reviewed and adjusted annually to reflect increases in the Consumer Price Index for All Urban Consumers; Garbage and Trash collection services (CUUR0000SEHG02), as, published by the United States Department of Labor, for the 12 month period ending December 31.

Secs. 16-212 to 16-250. Reserved.

Staff Summary Report

MEETING DATE:	March 12, 2019
AGENDA ITEM:	XII. BUSINESS ITEM (B)
AGENDA TITLE:	Aztec Municipal Golf Course

ACTION REQUESTED BY:	City Manager
ACTION REQUESTED:	Direction from City Commission for Aztec Municipal Golf Course
SUMMARY BY:	City Staff

PROJECT DESCRIPTION / FACTS

Aztec Municipal Golf Course at Hidden Valley is currently being operated through the following agreements:

- Between the City of Aztec and HVCC for the lease of the property (HVCC golf course); (agreement expires February 28, 2020; 90 days notice required for termination of contract);
- Between the City of Aztec and Randy Hodge dba Ruby's in the Valley for day to day operations of the golf course (agreement expires December 31, 2019; 90 days notice required for termination of contract)

City staff is requesting direction from the Commission for direction moving forward with Aztec Municipal Golf Course at Hidden Valley in the form of one of the three options listed below that have been previously discussed during Commission workshops and retreats:

Option

- A. Give notice per existing agreements to HVCC and Randy Hodge dba Ruby's in the Valley that the City intends to terminate the lease of the golf course grounds and operations of the golf course facilities at the end of ninety (90) days.

Option

- B. Give notice to HVCC and Ruby's in the Valley that the City intends to continue with the lease of the golf course grounds and operations of the golf course facilities under existing agreements through the end of the current calendar year (12/31/2019) at which time the agreement with Randy Hodge dba Ruby's in the Valley would not be renewed and the agreement with HVCC would be terminated.

Option

- C. Negotiate a new lease of the golf course with the current owner and pursue a new operating agreement with the current operator or advertise for a new operator.

FISCAL INPUT / FINANCE DEPARTMENT
--

For calendar year 2019 - \$20,000.00 will be paid for facilities and grounds lease to HVCC
\$24,000.00 will be paid to the Yamaha Corporation as payment due under agreement with Yamaha Corp.
\$1300 will be paid for the Liquor License (reimbursed to the City by Randy Hodge dba Ruby's in the Valley

The agreements for the Yamaha carts include final lease payments and balloon payments totaling \$86,061 which will occur in March 2020.

SUPPORT DOCUMENTS:

DEPARTMENT'S RECOMMENDED MOTION:

Move to approve **Option A** - Give notice per existing agreements to HVCC and Randy Hodge dba Ruby's in the Valley that the City intends to terminate the lease of the golf course grounds and operations of the golf course facilities at the end of ninety (90) days.

Move to approve **Option B** - Give notice to HVCC and Ruby's in the Valley that the City intends to continue with the lease of the golf course grounds and operations of the golf course facilities under existing agreements through the end of the current calendar year (12/31/2019) at which time the agreement with Randy Hodge dba Ruby's in the Valley would not be renewed and the agreement with HVCC would be terminated.

Move to approve **Option C** – Negotiate a new lease of the golf course with the current owner and pursue a new operating agreement with the current operator or advertise for a new operator.
