

**A G E N D A**  
**CITY OF AZTEC**  
**CITY COMMISSION WORKSHOP**  
**September 10, 2019**  
**201 W. Chaco, City Hall**  
**5:15 p.m.**

**5:15 P.M.**

**A. Discussion of Animal Control/Community Development Ordinances**

**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.

# Staff Summary Report

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<b>MEETING DATE:</b>	September 10, 2019
<b>AGENDA ITEM:</b>	Workshop
<b>AGENDA TITLE:</b>	Animal Control/Community Development Ordinance Discussion

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<b>ACTION REQUESTED BY:</b>	For discussion only
<b>ACTION REQUESTED:</b>	Discussion of Animal Control/Community Development Ordinances
<b>SUMMARY BY:</b>	City Staff

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## PROJECT DESCRIPTION / FACTS

Discussion of proposed City Ordinances pertaining to:

- Dogs riding in the open bed of trucks
- Adequate protection for dogs and cats during certain weather: to be brought indoors when temperatures reach a certain degree (winter): Adequate shade during summer
- Allowing City residents to have chickens, ducks or turkeys
- Potbelly pigs – spayed or neutered
- Dogs kept on chains for extended periods of time

## PROCUREMENT

N/A

## FISCAL IMPACTS

N/A

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**SUPPORT DOCUMENTS:**

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**DEPARTMENT'S RECOMMENDED MOTION:**

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**AG E N D A**  
**CITY OF AZTEC**  
**CITY COMMISSION MEETING**  
**September 10, 2019**  
**201 W. Chaco, City Hall**  
**6:00 p.m.**

**I. CALL TO ORDER**

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**

United States Pledge of Allegiance

New Mexico Pledge of Allegiance

I Salute the Flag of the State of New Mexico and the Zia Symbol of Perfect Friendship among United Cultures

**III. ROLL CALL**

**IV. APPROVAL OF AGENDA ITEMS**

**V. CONSENT AGENDA**

- A. Commission Meeting Workshop Minutes August 13, 2019
- B. Commission Meeting Minutes August 13, 2019
- C. Commission Special Meeting Minutes August 20, 2019
- D. Resolution 2019-1152 Municipal Surplus
- E. Resolution 2019-1153 Senior Center ICIP
- F. 2018 General Obligation Bond Agreement
- G. Resolution 2019-1154 NMDOT Agreement Control Number C5193387

*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"*

**VI. ITEMS REMOVED FROM CONSENT AGENDA**

**VII. PROCLAMATION**

- A. Manufacturing Day
- B. Constitution Week

**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.

**VIII. PRESENTATIONS**

Employee Recognition – Electric Department

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

**X. BUSINESS ITEMS**

A. Final Adoption of Ordinance 2019-494 Solid Waste and Recyclable

**XI. QUASI JUDICIAL HEARINGS (LAND USE)**

None

**XII. COMMISSIONER, CITY MANAGER, DEPARTMENT REPORTS**

**XIII. CLOSED SESSION**

Pursuant to State Law, Section 10-15-1 (H-6) discussion of sole source purchase that exceeds \$2,500 or of the contents of competitive sealed proposals during the contract negotiation process for Municipal Legal Services Award

**XIV. BUSINESS ITEMS (CONTINUED)**

B. RFP 2019-697 Municipal Legal Services Award

**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 CITY OF AZTEC  
2 WORKSHOP MEETING MINUTES  
3 August 13, 2019  
4

5 **I. CALL TO ORDER**  
6

7 Mayor Snover called the Workshop to order at 5:22 pm at the Aztec City  
8 Commission Room, City Hall, 201 W. Chaco, Aztec, NM.  
9

10 MEMBERS PRESENT: Mayor Victor Snover; Mayor Pro-Tem Fry;  
11 Commissioner Sherri Sipe; Commissioner,  
12 Mark Lewis; Commissioner Randall  
13

14 MEMBERS ABSENT: NONE  
15

16 OTHERS PRESENT: City Manager Steve Mueller; Finance Director  
17 Kathy Lamb; City Attorney Nicci Unsicker;  
18 Community Development Director Steven  
19 Saavedra; Project Manager Ed Kotyk; City  
20 Clerk Karla Saylor; see attached sign in sheet  
21

22 **A. Infrastructure Capital Improvement Projects Discussion**  
23

- 24
- 25 • City Manager Steve Mueller mentioned that staff has come up with a list of 10  
26 projects for the Capital Improvement Plan and placed them in order.
  - 27 • Lights at the Hartman Fields were mentioned
  - 28 • Want to keep pool on the list somewhere
  - 29 • Want to move the Riverside Project to #6
  - 30 • Surplus geared toward capital improvement projects this year and we need to try  
31 to get some projects done
  - 32 • Add flood mitigation for culverts

33 **II. ADJOURNMENT**  
34

35 Moved by Mayor Snover to adjourn the meeting at 5:52 p.m.  
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Mayor, Victor C. Snover

ATTEST:

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Karla Sayler, City Clerk

MINUTES PREPARED BY:

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

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CITY OF AZTEC  
COMMISSION MEETING MINUTES  
August 13, 2019

**I. CALL TO ORDER**

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

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**

- A. Invocation (led by Commissioner Randall)
- B. United States Pledge of Allegiance (led by Electric Director Ken George)
- C. New Mexico pledge of Allegiance (led by Electric Director Ken George)

**III. ROLL CALL**

Members Present: Mayor Victor Snover;  
Commissioner Sipe; Commissioner Mark  
Lewis; Commissioner Austin Randall

Members Absent: Mayor Pro-Tem Fry

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

**IV. APPROVAL OF AGENDA ITEMS**

MOVED by Commissioner Sipe to approve the agenda as given; SECONDED by  
Commissioner Randall

All voted Aye: Motion passed four to zero

**V. CONSENT AGENDA**

- A. Commission Meeting Workshop Minutes July 23, 2019
- B. Commission Meeting Minutes July 23, 2019
- C. Commission Meeting Special Workshop Minutes July 25, 2019
- D. Special Commission Meeting Minutes July 25, 2019
- E. Temporary Construction Permit (TCP) for NM 173 NMDOT Project
- F. Resolution 2019-1144 Polling Place Designation Amendment
- G. Resolution 2019-1145 Closing of Time Certificate of Deposit for City of Aztec

- 46 H. Resolution 2019-1146 Opening and Closing Time Certificate of Deposit for City  
47 of Aztec  
48 I. Memorandum of Understanding (MOU) between City of Aztec Public Library  
49 and Mosaic Academy Charter School  
50 J. Resolution 2019-1147 FY20 Annual Budget Adoption  
51 K. ITB 2019-703 Water Plant #3 & #4 Control & SCADA Upgrade Award  
52 L. Memorandum of Understanding City of Farmington Electric  
53 M. Resolution 2019-1149 Application for \$50,000 New Mexico Finance Authority  
54 Planning Grant  
55

56 MOVED by Commissioner Lewis to Approve the Consent Agenda as given  
57 SECONDED by Commissioner Sipe  
58

59 All voted Aye: Motion passed four to zero  
60

61 **VI. ITEMS REMOVED FROM CONSENT AGENDA**

62 NONE  
63

64 **VII. PROCLAMATION**

65 NONE  
66  
67

68 **VIII. PRESENTATIONS**

69 Employee Recognition – Electric Department  
70  
71 Ken George explained that he will have the information ready for the next meeting.  
72  
73

74 **IX. CITIZENS INPUT (3 Minutes Maximum)**

75  
76 Kathleen Sullivan voiced concerns about the trash and recycling costs she  
77 mentioned that she does not like to not have a choice about the recycling. She also had  
78 concerns about a dog park in Aztec.  
79

80 **X. BUSINESS ITEMS**

- 81  
82 A. Final Adoption of Ordinance 2019-492: An Ordinance Amending Chapter 22  
83 Public Property, Section 22-513 and Incorporating the Fee into Chapter 16 Fee  
84 Schedule  
85

86 City Manager Steve Mueller mentioned that this is the encroachment fee that  
87 was left out of one of the chapters so this will just make them consistent.  
88

89 MOVED by Commissioner Randall to Approve Final Adoption of Ordinance 2019-  
90 492. An Ordinance Amending Chapter 22 Public Property, Section 22-513 and

91 Incorporating the Fee into Chapter 16 Fee Schedule SECONDED by  
92 Commissioner Sipe

93  
94 A Roll Call was Taken; All voted Aye; Motion passed four to zero  
95

- 96 B. Final Adoption of Ordinance 2019-493: Amending Chapter 24 Traffic to Include  
97 Using a Handheld Mobile Communication Device as a Violation and Section 1-12  
98 to Include Penalty and Fees for Such Violation  
99

100 City Manager Steve Mueller mentioned that we have received no comment from  
101 the public.  
102

103 MOVED by Commissioner Lewis to Approve Final Adoption of Ordinance 2019-  
104 493: Amending Chapter 24 Traffic to Include Using a Handheld Mobile  
105 Communication Device as a Violation and Section 1-12 to Include Penalty and  
106 Fees for Such Violation SECONDED by Commissioner Randall  
107

108 A Roll Call was Taken; All voted Aye; Motion passed four to zero  
109

- 110 C. Intent to Adopt Ordinance 2019-494: Amending Chapter 21 Solid Waste And  
111 Recyclables  
112

113 City Manager Steve Mueller mentioned that this deals with chapter 21 and this  
114 defines recycling and fees to encompass the new trash service.  
115

116 MOVED by Commissioner Sipe to Approve the Intent to Adopt Ordinance 2019-  
117 494: Amending Chapter 21 Solid Waste and Recyclables SECONDED by  
118 Commissioner Lewis  
119

120 A Roll Call was Taken; All voted Aye; Motion passed four to zero  
121

- 122 D. San Juan County Household Hazardous Waste Program  
123

124 City Manager Steve Mueller mentioned this deals with the program that the  
125 County and the City of Farmington have cost shared over the past couple of  
126 years. The County has asked if the City of Aztec would like to partner with them  
127 this year. The cost will be \$65 per vehicle. It is scheduled for September 21<sup>st</sup>.  
128 This cost has not been budgeted. Waste Management does offer an at your door  
129 service at an additional cost to citizens. Electric Director mentioned that he feels  
130 this would be a disservice to the public to not have this and he offered to help.  
131 Mayor Snover explained that he is looking at the worst case scenario and it could  
132 get expensive.  
133

134 MOVED by Commissioner Randall to Approve the partnering with San Juan  
135 County for Household Hazardous Waste Program SECONDED by Commissioner  
136 Sipe

137  
138 A Roll Call was Taken; All voted Aye; Motion passed four to zero

139  
140 E. FY 20 Funding Application: Aztec Vintage Social/Steamers and Dreamers

141  
142 Ed Kotyk said that he was asked by Cindy Iacovetto to speak on her behalf. Ed  
143 explained that the Vintage Social is teaming up with the Truck show and other  
144 entities. She is hoping that by moving the event outside in the fall she will get  
145 more people to attend than in the winter time. The funding will help with the cost  
146 of the band and security. This is an attempt to boost Steamers and Dreamers  
147 and the other events by combining them. Mayor Snover mentioned that this is  
148 short notice and there is no data on what to be anticipated. Commission want a  
149 report back as to how the event went.

150  
151 MOVED by Commissioner Randall to Approve the funding request for Rein  
152 Dance Association on behalf of Steamers and Dreamers in the amount of \$3,700  
153 SECONDED by Commissioner Sipe

154  
155 A Roll Call was Taken; All voted Aye; Motion passed four to zero

156  
157 **XI. QUASI JUDICIAL HEARINGS (LAND USE)**

158  
159 A. OG 19-02 Recompletion "Hydraulic Fracturing" of the Bruington Gas Com C  
160 #1R Gas Well

161  
162 Mayor Snover read the land use script and asked if any Commissioners had any  
163 conflicts, personal bias or ex-parte communication to declare. There was none.

164  
165 Erikka Martinez Community Development Administrative Assistant  
166 explained that this request seeks approval to recomplete an existing gas well located  
167 within Aztec's municipal limits on private property. The proposed site is in the City's  
168 southwestern area of Aztec. The technical location is NWNW of Section 26, T30N,  
169 R11W 770' FNL, 495' FWL, In the City of Aztec, San Juan County, New Mexico.  
170 According to San Juan County Assessors, John Fifield et al. owns the parcel of property  
171 where the gas well resides.

172 The well site information is as follows:

173 Well Name: Bruington Gas Com C #1R  
174 Lease No. Fifield 4176  
175 Existing Pad Area: 0.28 Acres  
176 New Pad Area: N/A

177 Total Parcel Area: 160 acres  
178 Building Info: N/A  
179 Floodplain: Zone X  
180 Arroyo: Approximately 425-feet from well pad  
181 Access: Pepsi Way  
182 Contractor: Baywater Drilling  
183 Formation: Dakota  
184

185 Ben Mitchell submitted the recompletion application on behalf of Hilcorp Energy  
186 Company, located at 382 Road 3100 in Aztec, NM. The application includes, but not  
187 limited to: the State of New Mexico OCD permit application, a copy of the oil and gas  
188 lease agreement, sites maps, and a noise mitigation plan. The applicant did not include  
189 a wildlife or weed mitigation plan (threatened or endangered (T&E), as this is an existing  
190 well site.

191 The submittal indicated the well location is approximately 903 feet from the nearest  
192 commercial structure and 1,011 feet from the nearest residential dwelling unit. Access  
193 to the location utilizes existing access easements and Pepsi Way. The submittal  
194 indicated primary access from NM State Highway 550 and Pepsi Way. This access  
195 point is inside Aztec's municipal limits. During drilling and subsequent operations, all  
196 equipment and vehicles need to be confined to the well site and cannot obstruct any  
197 access easement or right-of-way.

198 The recommendation for approval is contingent on the applicant adhering to all of the  
199 processes and performance measures described in all mitigation plans, and all other  
200 regulations whether they be federal, state, or local in origin. The approval is also  
201 conditioned upon the applicant maintaining compliance with the industry's own Standard  
202 Best Management Practices and City of Aztec's Oil and Gas regulations. The  
203 Community Development Department requires prior notification before construction and  
204 drilling of the said well. In addition, a site visit during the construction of recompletion  
205 from the Hilcorp Energy Company is required to ensure all mitigation plans and  
206 conditions of approval are met during and after construction. Community Development  
207 does not feel landscaping is necessary, as a result of the location, lack of visibility from  
208 the right-of-way, and no future development plans in the near future. However,  
209 Community Development is concerned with drilling noise in and around the well pad.  
210 The Community Development Department does not object to this application, OG 19-02  
211 a request to modify an existing gas well at the prescribed location and recommends  
212 approval, with the following conditions:

213

- 214 1. The development must adhere to all of the processes and performance  
215 measures described in submitted documents, including the Surface Use Plan of  
216 Operations and Surface Reclamation Plan, as well as all other applicable  
217 regulations promulgated by federal, state and local jurisdictions;
- 218 2. The applicant needs to notify the Community Development Department before  
219 construction, drilling, and recompletion for the said well commences;
- 220 3. The applicant needs to reinstall the fence surrounding the well pad, with the  
221 screening slats once recompletion is concluded pursuant to this application;
- 222 4. The applicant needs to adhere to the submitted Noise Mitigation Plan.  
223 Additionally, onsite construction and drilling operation hours need to be from 7:00  
224 AM to 7:00 PM and limited to Monday through Friday, because of the sensitivity  
225 of residential units within 1,011-feet from the well pad and 2,500-feet from the  
226 Presidential Inn Suites Hotel

227 Tom Duggan who was representing Hilcorp mentioned a couple of corrections on  
228 the staff summary. The section is 21 not 26 and the pad is 2 acres not .2 acres.

229 Mayor Snover closed the hearing to testimony.

230 MOVED by Commissioner Sipe to Approve OG 19-02, a Gas Well named  
231 Bruington Gas Com C #1R gas well, submitted by Ben Mitchell, on behalf of  
232 Hilcorp Energy Company, with staff's recommended conditions 1 – 4  
233 SECONDED by Commissioner Randall

234

235 A Roll Call was Taken; All voted Aye; Motion passed four to zero

236

## 237 **XII. COMMISSIONER, CITY MANAGER, DEPARTMENT REPORTS**

238

239 City Manager Steve Mueller mentioned that we have a special meeting next  
240 Tuesday and NMML annual conference at the end of August.

241

242 Commissioner Sipe mentioned that tomorrow is Senior day at the fair tomorrow.  
243 She enjoyed Connie Mac. NWNM Seniors meeting this week at the senior center in  
244 Aztec and a regular board meeting, EDAB and MPO.

245

246 Commissioner Randall mentioned that he would be gone for the 1<sup>st</sup> meeting of  
247 September. He mentioned that it is fair time.

248

249 Mayor Snover mentioned he attended an ECHO board meeting and they are  
250 going through a transition, they will have a special board meeting next week.

251

## 252 **XIII. ADJOURNMENT**

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254 Mayor Snover moved to adjourn the meeting at 7:15 pm SECONDED by  
255 Commissioner Sipe

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Mayor, Victor Snover

ATTEST:

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Karla Sayler, City Clerk

MINUTES PREPARED BY:

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

DRAFT

1 CITY OF AZTEC  
2 SPECIAL COMMISSION MEETING MINUTES  
3 August 20, 2019  
4  
5

6 **I. CALL TO ORDER**  
7

8 Mayor Victor Snover called the Meeting to order at 6:01 pm at the Aztec City  
9 Commission Room, City Hall, 201 W. Chaco, Aztec, NM.  
10

11 **II. INVOCATION AND PLEDGE OF ALLEGIANCE**  
12

- 13 A. Invocation (led by Commissioner Randall)
- 14 B. United States Pledge of Allegiance (led by Mayor Snover)
- 15 C. New Mexico pledge of Allegiance (led by Mayor Snover)

16 **III. ROLL CALL**  
17

18 Members Present: Mayor Victor Snover; Mayor Pro-Tem Fry  
19 Commissioner Sipe; Commissioner Mark  
20 Lewis; Commissioner Austin Randall  
21

22 Members Absent: NONE  
23

24 Others Present: City Manager Steve Mueller; City Attorney Nicci Unsicker;  
25 Project Manager Ed Kotyk; City Clerk Karla Sayler (see  
26 attendance sheet)  
27

28 **IV. PRESENTATION**  
29

30 Lou Go's Transportation  
31

32 Lou Go's Transportation are asking for a letter of support in able to apply for  
33 Federal Grant Funding. This grand will allow them to provide paratransit services to the  
34 residents in the City of Aztec. They would provide door to door and curb to curb  
35 services for those who are disabled.  
36

37 **V. APPROVAL OF AGENDA ITEMS**  
38

39 MOVED by Commissioner Sipe to approve the agenda as given; SECONDED by  
40 Mayor Pro-Tem Fry  
41

42 All voted Aye: Motion passed five to zero  
43

44 **VI. BUSINESS ITEMS**  
45

46 A. Resolution 2019-1151 Adopting the 2021-2015 Infrastructure Capital

47 Improvement Plan (ICIP)

48  
49 City Manager Steve Mueller mentioned that this was work shopped and includes  
50 the changes discussed. To include Flood Hazard Mitigation and the Wellness  
51 Center. There were also some number changes.

52  
53 MOVED by Commissioner Randall to approve the Resolution 2019-1151  
54 Adopting the 2021-2025 Infrastructure Capital Improvement Plan (ICIP);  
55 SECONDED by Commissioner Sipe

56  
57 A Roll Call was taken: All voted Aye: Motion passed five to zero

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59  
60 B. Memorandum of Understanding Aztec High School Resource Officer

61  
62 City Manager Steve Mueller explained that this is that same as last year and is  
63 specific to Aztec High School. We currently have one SRO that is district wide.  
64 This agreement is put in place for 1 year and a total of \$58,000. Both positions  
65 were budgeted for.

66  
67 MOVED by Commissioner Sipe to approve Memorandum of Understanding  
68 Aztec High School Resource Officer; SECONDED by Commissioner Randall

69  
70 A Roll Call was taken: All voted Aye: Motion passed five to zero

71  
72 **VII. CLOSED SESSION**

73  
74 Closed Session Pursuant to State Law, Section 10-15-1 (H-2) Limited Personnel  
75 Matters, City Manager Evaluation

76  
77 Mayor Snover moved the meeting into closed session at 6:20 pm.

78 All voted Aye

79 Mayor Snover moved the meeting from closed session at 6:55 pm stating only the  
80 matters of City Manager Evaluation were discussed.

81 All voted Aye.

82  
83 **VIII. ADJOURNMENT**

84  
85 Mayor Snover moved to adjourn the meeting at 7:00 pm SECONDED by Commissioner  
86 Sipe

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Mayor, Victor Snover

ATTEST:

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Karla Sayler, City Clerk

MINUTES PREPARED BY:

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

DRAFT

# Staff Summary Report

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**MEETING DATE:** September 10, 2019  
**AGENDA ITEM:** V. CONSENT (D)  
**AGENDA TITLE:** Resolution 2019-1152 Municipal Surplus

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**ACTION REQUESTED BY:** Library  
**ACTION REQUESTED:** Approval of Resolution 2019-1152  
**SUMMARY BY:** Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- The Police Department has identified city property which no longer provides operational value to the department and requests approval of those items as municipal surplus. Police equipment including light bars, radars, radios, etc. will not be listed on public surplus but will be destroyed through other methods.
- 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

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**SUPPORT DOCUMENTS:** Resolution 2019-1152  
Surplus List

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2019-1152 Declaring Certain Municipal Property Not Essential For Municipal Purpose and Directing It Be Sold or Disposed.

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**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
Twanged	Carol Higgins Clark
I'll be seeing you	Mary Higgins Clark
Aleph	
And another thing	Eoin Colfer
Drop dead beautiful	Jackie Collins
Poor little bitch girl	Jackie Collins
Angel in black	Max Allan Collins
Gaits of heaven	Susan Conant
Mr. Monk gets on board: a novel	
Mr. Monk is open for business: a novel	
Vector	Robin Cook
The fate of Katherine Carr	Thomas H. Cook
Cuba	Stephen Coonts
London falling	
Scarpetta's winter table	Patricia Cornwell
The sound of broken glass	
The night journal	Elizabeth Crook
Yellowcake	Ann Cummins
The Alpine Xanadu: an Emma Lord mystery	
The Alpine vengeance	
Sabotage	
Tangled vines	Janet Dailey
A Piggly Wiggly Christmas	Robert Dalby
Stiltsville: a novel	
Mind catcher	John Darnton
Somewhere lies the moon	Kathryn Lynn Davis
Venus in copper	Lindsey Davis
Dead or alive	
Leverage: the zoo job	
Christmas chocolat	
Facets	Barbara Delinsky
Venetia Kelly's traveling show	Frank Delaney
The mystery of grace	Charles de Lint
Vampires of Manhattan: the new Blue Bloods coven	
The gold coast	Nelson DeMille
The lion's game	Nelson DeMille

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
The Sisters brothers	
The assassins of Isis	P.C. Doherty
Frog music: a novel	
The Death's Head chess club	
The black violin : a novel	Chris Mulhern
Clearing customs	Martha J. Egan
The bookman's wake	John Dunning
The bookwoman's last fling	John Dunning
The sign of the book	John Dunning
The bookman's promise	ohn Dunning
Diaspora	Greg Egan
The fourth horseman	Randy Lee Eickhoff
The enchanted April	Elizabeth von Arnim
The husband list	
North of Boston: a novel	
Eve : a novel of the first woman	Elissa Elliott
The high divide	
The beet queen	Louise Erdrich
The antelope wife	Louise Erdrich
Siracusa	
The white devil	
Tales of burning love	Louise Erdrich
Four souls	Louise Erdrich
Red star rising	Brian Freemantle
On a night like this	
Hell's gate	Stephen Frey
The power broker	Stephen Frey
Silent partner	Stephen Frey
Shadow account	
The fourth order	Stephen Frey
San Antonio sunset	Kathleen Fuller
Dark voyage	Alan Furst
Juliet	Anne Fortier
The fourth protocol	Frederick Forsyth
Canada: a novel	
A passage to India	

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
The rings of hubris	
Star Trek	Alan Dean Foster
Proof	Dick Francis
Driving force	Dick Francis
Second wind	Dick Francis
Shattered	Dick Francis
Straight	Dick Francis
Bridget Jones, mad about the boy	
Stone fish	Olivia Ferrell
City of veils	Zo*e Ferraris
Whispers and lies	Joy Fielding
Power play	Joseph Finder
White oleander	Janet Fitch
The kingdom of Ohio	Matthew Flaming
Tengo sed	
Extremely loud & incredibly close	Jonathan Safran Foer
Daisy Fay and the miracle man	Fannie Flagg
Skinnydipping	
All that I have	Castle Freeman Jr
Mind/reader / Brian Freemantle	Brian Freemantle
P" is for peril	Sue Grafton
The investigators	W.E.B. Griffin
The murderers	W.E.B. Griffin
Final justice	W.E.B. Griffin
The secret warriors	W.E.B. Griffin
The soldier spies	W.E.B. Griffin
The fighting agents	W.E.B. Griffin
Death and honor	W.E.B. Griffin and William E. Butterworth IV
Special ops	W.E.B. Griffin
Grant comes east	Newt Gingrich
Gettysburg	Newt Gingrich
Love in the time of cholera	Gabriel Garc*ia M*arquez
The whole world over	Julia Glass
The widower's tale	Julia Glass
Heading out to wonderful	

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
A mouth full of shell	Connie Gotsch
Sherlock Holmes and the Shakespeare letter	
The box	G*unter Grass
Younger than springtime	Andrew M. Greeley
Sea escape	
Changing light	Nora Gallagher
The undead pool	
The naked rainbow and other stories	Nasario Garc*ia
Coal camp justice	Ricardo L Garc*ia
Raising Abel	W. Michael Gear and Kathleen O'Neal Gear
A good American	
Deception on his mind	Elizabeth George
In the presence of the enemy	
Inside the O'Briens	
Cottonwood saints	Gene Guerin
The song of Jonah	Gene Guerin
The lock artist	Steve Hamilton
Phantom angel	
The snow white Christmas cookie	
The return of the native	Carl J. Weber
The monogram murders	
The fear index	
	Robert Harris
Blue deer thaw	Jamie Harrison
Brother Wind	Sue Harrison
The resurrectionist	
Gunfight!	James C. Work
Oldest living Confederate widow tells all / Allan Gurganus	Allan Gurganus
The red house	
Assassin	David Hagberg
Castro's daughter	
The evening news	Arthur Hailey
Going dark	
Red sky at night	James W. Hall

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
Silencer	James W. Hall
A painted house	John Grisham
Clockwork Prince	Cassandra Claire
Clockwork Angel	Cassandra Claire
City of Bones	Cassandra Claire
Lady Midnight	Cassandra Claire
In Pursuit of the Proper Sinner	Elizabeth George
Dune. The Butlerian jihad	Brian Herbert and Kevin J. Anderson
The winds of Dune	Brian Herbert and Kevin J. Anderson
Dune	Brian Herbert and Kevin J. Anderson
Dune	Brian Herbert and Kevin J. Anderson
Hunters of Dune	Brian Herbert and Kevin J. Anderson
Paul of Dune	Brian Herbert and Kevin J. Anderson
Sandworms of Dune	Brian Herbert and Kevin J. Anderson
Without mercy	Jack Higgins
New spring	Robert Jordan
A memory of light	
Towers of midnight	Robert Jordan and Brandon Sanderson
The gathering storm	Robert Jordan and Brandon Sanderson
Knife of dreams	Robert Jordan
Sheba	Jack Higgins
The hottest state	Ethan Hawke
The good father	
The secret of lost things	Sheridan Hay
Heir to the Jedi	
Secrets of the wolves	
Promise of the wolves	Dorothy Hearst
Circumference of darkness	Jack Henderson
Sisterhood of Dune	
Man of two worlds	Frank Herbert and Brian Herbert
A civil contract	
The fourth hand	John Irving
After all these years	Susan Isaacs
On secret service	John Jakes
The portrait of a lady	Henry James
News of the world	

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
Inherit the Dead	
Leaving Berlin	
Sadie-in-waiting	Annie Jones
Fortune smiles	
Mr. Chartwell	
Maestra	
The stranger house	Reginald Hill
The elephant keepers' children	
The Red Garden	
Skylight confessions	Alice Hoffman
Under the wide and starry sky	
The story sisters	Alice Hoffman
Midnight rainbow	Linda Howard
The wonder-worker	Susan Howatch
365 : no repeats: a year of deliciously different dinners	
Borden Chantry	Louis L'Amour
The Broken gun	Louis L'Amour
Catlow	Louis L'Amour
Conagher	Louis L'Amour
Reilly's luck	Louis L'Amour
The Mountain Valley war	Louis L'Amour
Under the Sweetwater rim	Louis L'Amour
Tucker	Louis L'Amour
A rose blooms twice	
Steamboat Gothic	
The devil's elixir	
Dreaming spies	Mary Russell and Sherlock Holmes
The murder of Mary Russell	Mary Russell and Sherlock Holmes
Children of fire	
Liberty	Garrison Keillor
Pontoon	Garrison Keillor
The captain's wife	Douglas Kelley
The daughters of Mars	
The sea is my brother	
Esau	Philip Kerr

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
A five year plan	Philip Kerr
Hitler's peace	Philip Kerr
The lady from Zagreb	
If the dead rise not	Philip Kerr
The warrior's path	Louis L'Amour
A drink before the war	Dennis Lehane
The lowland	
The namesake	Jhumpa Lahiri
Secrets in the land of enchantment	
Wishin' and hopin'	Wally Lamb
Patty Jane's House of Curl	Lorna Landvik
The wind leaves no shadow	Ruth Laughlin
Avalon : the return of King Arthur	Stephen R. Lawhead
The expatriates	
Skeleton crew	Stephen King
Man and wife	Andrew Klavan
Blue-eyed devil	Lisa Kleypas
The bear went over the mountain	William Kotzwinkle
Delivering death	
Falling awake	Jayne Ann Krentz
Alta	
Joust	Mercedes Lackey
Sanctuary	
Aerie	
Beautiful sacrifice	
Always time to die	Elizabeth Lowell
Star wars	George Lucas
Robert Ludlum's The Altman code	Gayle Lynds
The Ambler warning / Robert Ludlum	
Robert Ludlum's the Paris option	Robert Ludlum and Gayle Lynds
Betrayal	John Lescroart
A plague of secrets	John Lescroart
The eye of jade	Diane Wei Liang
The thrall's tale	Judith Lindbergh
Flash house	Aimee Liu
Consequences	Penelope Lively

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
The master of secrets	D.S. Lliteras
The last detective	Peter Lovesey
The tooth tattoo	
Stagecoach to hell	Giles A. Lutz
The mind game	
The night sessions	
Call me Mrs. Miracle	Debbie Macomber
Christmas wishes	Debbie Macomber
Home for the holidays	Debbie Macomber
The association of small bombs	
Killing floor	
But I wanted a baby brother!	Diane Goode
Alice in jeopardy	Ed McBain
The frumious bandersnatch	Ed McBain
Hark!	Ed McBain
Kiss	Ed McBain
Lullaby	Ed McBain
Mary, Mary	Ed McBain
There was a little girl	Ed McBain
Gods and beasts	
The red road	
Sky woman falling	Kirk Mitchell
Still summer	Jacquelyn Mitchard
Running alone in photographs	Robert Mirabel
Skippyjon Jones Cirque de Olé	
The associate	Phillip Margolin
Shoshana's song	
Danica	
The man who smiled	Henning Mankell
The Cairo trilogy	Naguib Mahfouz
The block captain's daughter	
More than words. Vol. 5	Heather Graham
Dance of the thunder dogs	Kirk Mitchell
The twelve tribes of Hattie	
High country fall	Margaret Maron

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
Bleed a river deep	Brian McGilloway
The weight of blood	
The portable Veblen	
In the morning I'll be gone	
I hear the sirens in the street	
The cold cold ground	
Other worlds	Barbara Michaels
Vanishing point	Marcia Muller
Locked in	Marcia Muller
Dead midnight	
True colors	Doris Mortman
The wild rose	Doris Mortman
The long fall	Walter Mosley
The huckleberry murders	Patrick F. McManus
Who asked you	
Murder on the Red Cliff Rez	Mardi Oakley Medawar
By sorrow's river	
Loop group	Larry McMurtry
Paradise	Judith McNaught
book: Possessions	Judith Michael
Captive splendors	Fern Michaels
Game over	Fern Michaels
Southern comfort	
The Lake Shore Limited	Sue Miller
The senator's wife	Sue Miller
The lady	Anne McCaffrey
The Sunday philosophy club	Alexander McCall Smith
Sins of the flesh	
Cross and burn	
The retribution	
Fever of the bone	Val McDermid
Nutshell	
All that glitters	Gilbert Morris
Shades of red	Doris Mortman
Uniform building code compliance manual : Scott Parish	
Consumer Reports buying guide 2016	

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
Cold War reference library. Cumulative index	Lawrence W. Baker
The New York Times guide to essential knowledge	
The Oxford dictionary of American quotations	Hugh Rawson and Margaret Miner
Cassell's humorous quotations	Nigel Rees
The Interpreter's dictionary of the Bible	
The Interpreter's dictionary of the Bible	
The Interpreter's dictionary of the Bible	
The Interpreter's dictionary of the Bible	
The world almanac and book of facts 2017	
The encyclopedia of genetic disorders and birth defects	James Wynbrandt and Mark D. Ludman
Encyclopedia of homeopathy	Andrew Lockie
PDR for nonprescription drugs	
Physicians' desk reference, 2015	
The Merck manual of diagnosis and therapy	Mark H. Beers
Encyclopedia of disability	Gary L. Albrecht
Encyclopedia of disability	Gary L. Albrecht
Encyclopedia of disability	Gary L. Albrecht
The Cornell illustrated encyclopedia of health	Antonio M. Gotto, Jr
Encyclopedia of disability	Gary L. Albrecht
Encyclopedia of disability	Gary L. Albrecht
Chilton's import auto service manual 1998-2002	Kevin M.G. Maher
Chilton's auto repair manual, 1991-1995	Kerry A. Freeman
Chilton's imported auto repair manual 2003 edition	Kerry A. Freeman
Chilton's tractor repair manual	Kerry A. Freeman
Chilton's auto repair manual, 1972-1979	Kerry A. Freeman
Chilton's import car manual, 1991-1995	Kerry A. Freeman
Chilton's import car manual, 1988-1992	Kerry A. Freeman
Chilton's auto service manual, 2003 edition	Kerry A. Freeman
Chilton's auto service manual, 2002 edition	Kerry A. Freeman
DK atlas of world history	Jeremy Black
Twentieth century authors	
Atlas of the world	
Amphibians and Reptiles of New Mexico	William G. Degenhardt
Creatures, Criers & Crawlers of the Southwest	April Kopp
Animal	Smithsonian
Plants of The Gods	Richard Evans Shultes

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

<b>LIBRARY SURPLUS</b>	
<b>TITLE</b>	<b>AUTHOR</b>
Webster's New Thesaurus of the English Language	
Weeds of the West	
Familiar Quotations	John Bartlett
SIXTEENTH EDITION FAMILIAR QUOTATION	JONH BARTLETT
31ST EDITION KNIVES 2011	JOE KERTZMAN
SCHROEDER'S COLLECTIBLE TOYS ANTIQUE TO MORDERN PRICE GUIDE	
WRITER'S MARKET 2016	
WRITER'S MARKET 2015	
NEC 2008	
MLA HANDBOOK FOR WRITER'S OF RESEARCH PAPERS	
COMPLETE OUTDOORS ENCYCLOPEDIA	VIN T. SPARANO
THE CIVIL WAR ALMANAC	HENRY STEELE COMMAGER
GUN DIDEST 2011	DAN SHIDELER

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

**POLICE DEPARTMENT SURPLUS**

Department	Item/Model	
Police		<p>Lanier L0425C Copier S/N L3685101612</p> <p>Acquisition Date: Unknown</p> <p>Reason for Surplus: Obsolete Condition: Poor</p>
Police		<p>2002 Jeep Grand Cherokee Unit 002-132 S/N 1J4GW48S32C260043 Odometer: 84,301</p> <p>Acquisition Date: 03/30/2002</p> <p>Reason for Surplus: Not Required In Department Condition: Poor</p>
Police		<p>1999 Dodge Intrepid Unit 001-143 S/N 2B3HD46R6XH818540 Odometer: 129,428</p> <p>Acquisition Date: 02/20/2006</p> <p>Reason for Surplus: Not Required in Department Condition: Fair</p>
Police		<p>1991 GMC Suburban Unit 002-013 S/N 1GKEV16K4MF518402 Odometer: 41,124</p> <p>Acquisition Date: 04/25/1991</p> <p>Reason for Surplus: Not Required in Department Condition: Fair</p>

**CITY OF AZTEC  
RESOLUTION 2019-1152  
September 10, 2019**

**MUNICIPAL SURPLUS**

Department	Item/Model	
Police		<p>2005 Ford Expedition 4WD LXT Unit 002-139 S/N 1FMPU16585LA65157 Odometer: 153,806</p> <p>Acquisition Date: 02/03/2005</p> <p>Reason for Surplus: Not Required in Department Condition: Poor</p>
Police		<p>Kayak Trophy 126</p> <p>Acquisition Date: Unclaimed Evidence</p>
Police	<p>Misc Police Vehicle Equipment (removed from multiple police units previously surplus):</p> <ul style="list-style-type: none"> <li>Police Lightbars (Federal Signal, Code 3, Vector)</li> <li>Vehicle Partitions</li> <li>Spare Seats</li> <li>K9 Partition</li> <li>Police Radars</li> <li>In Car Camera Systems</li> <li>Two Way Radio Systems (Motorola)</li> </ul>	

# **CITY OF AZTEC RESOLUTION 2019-1152**

**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 10th day of September 2019.

\_\_\_\_\_  
VICTOR C. SNOVER, MAYOR

ATTEST:

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

# Staff Summary Report

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<b>MEETING DATE:</b>	September 10, 2019
<b>AGENDA ITEM:</b>	V. CONSENT AGENDA (E)
<b>AGENDA TITLE:</b>	Resolution 2019-1153 Adopting the 2021-2025 Infrastructure Capital Improvement Plan (ICIP) for the City of Aztec Senior Center

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<b>ACTION REQUESTED BY:</b>	City Staff
<b>ACTION REQUESTED:</b>	APPROVAL
<b>SUMMARY BY:</b>	Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- A local infrastructure capital improvement plan is a plan that establishes planning priorities for anticipated capital projects. The need for this kind of planning has reached critical proportions in New Mexico, where local governments are faced with pressing demands for multiple capital improvements and limited funding to support them. The state-coordinated ICIP process encourages entities to plan for the development of capital improvements so that they do not find themselves in emergency situations, but can plan, fund, and develop infrastructure at a pace that sustains their activities.
- The Department of Finance and Administration (DFA), through its authority in NMSA 1978, Sections 6-6-2J, 6-6-4, 9-6-5.1, 11-6-2, 11-6-3, 11-6-4.1, 11-6-5, and 11-6-5.1, strongly encourages each jurisdiction to prepare a Five-Year Infrastructure Capital Improvement Plan (ICIP).
- The NM Aging and Long Term Services Department (ALTSD) administers capital funding for the senior centers throughout the state. A requirement of funding applications submitted to ALTSD is the inclusion of the project/equipment on the entity's ICIP. A separate ICIP specific to Senior Centers in the state was implemented in 2015.
- Funding applications for the Senior Center are due in the spring, are reviewed by ALTSD and if approved, are included in capital requests to legislature. Legislative sessions occurring in even years, funding, if approved by voters with the November ballot, is through GO Bonds; odd years are funded by the legislature through the capital outlay bill.

## FISCAL INPUT / FINANCE DEPARTMENT

The Senior Center ICIP must be completed to meet a required element for funding applications which may be submitted in spring 2020 for the 2021 Legislative session.

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<b>SUPPORT DOCUMENTS:</b>	Resolution 2019-1153 2021-2025 ICIP Summary
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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Resolution 2019-1153 adopting the 2021-2025 Senior Center Infrastructure Capital Improvement Plan (ICIP).

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# Infrastructure Capital Improvement Plan FY 2021-2025

## City of Aztec Senior Center Project Summary

ID	Year	Rank	Project Title	Category	Funded to date						Total	Amount	Phases?
						2021	2022	2023	2024	2025	Project Cost	Not Yet Funded	
33202	2021	001	Aztec Senior Center HVAC Replacement	Facilities - Senior Facilities	0	150,000	0	0	0	0	150,000	150,000	No
35275	2021	002	Senior Center Flooring Replacement	Facilities - Senior Facilities	0	40,000	0	0	0	0	40,000	40,000	No
35316	2021	003	Senior Center Kitchen Renovations	Facilities - Senior Facilities	0	125,000	0	0	0	0	125,000	125,000	No
35320	2021	004	Senior Center Kitchen Ramp Renovation	Facilities - Senior Facilities	0	35,000	0	0	0	0	35,000	35,000	No
36784	2021	005	Exterior Alcove Remodel	Facilities - Senior Facilities	0	55,000	0	0	0	0	55,000	55,000	No
33204	2021	006	Senior Center Kitchen Equipment	Equipment - Senior Center Equipment	0	15,000	0	0	0	0	15,000	15,000	No
36877	2021	007	Senior Center ADA Doors	Facilities - Senior Facilities	0	50,000	0	0	0	0	50,000	50,000	No
36876	2021	008	Senior Center Bathroom Renovation	Facilities - Senior Facilities	0	40,000	0	0	0	0	40,000	40,000	No
36878	2021	009	Senior Center Acoustic Walls & Stage Remodel	Facilities - Senior Facilities	0	100,000	0	0	0	0	100,000	100,000	No
35319	2021	010	Senior Center Transportation Vehicles	Vehicles - Senior Facility Vehicle	0	90,000	0	0	0	0	90,000	90,000	Yes
33206	2022	001	Senior Center Roofing	Facilities - Senior Facilities	0	0	165,000	0	0	0	165,000	165,000	No
33205	2022	002	Meal Delivery Vehicles	Vehicles - Senior Facility Vehicle	0	0	70,000	0	0	0	70,000	70,000	No
33207	2022	003	Senior Center Parking Lot	Facilities - Senior Facilities	0	0	70,000	0	0	0	70,000	70,000	No
31535	2024	001	Aztec Senior Center Handicap Conversion Van	Vehicles - Senior Facility Vehicle	0	0	0	0	60,000	0	60,000	60,000	No
31537	2024	002	Aztec Senior Center Stucco	Facilities - Senior Facilities	0	0	0	0	115,000	0	115,000	115,000	No

## Infrastructure Capital Improvement Plan FY 2021-2025

31539	2024	003	ASC Walk in Cooler Freezer	Equipment - Senior Center Equipment	0	0	0	0	45,000	0	45,000	45,000	No
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**Number of projects:** 16

	<b>Funded to date:</b>	<b>Year 1:</b>	<b>Year 2:</b>	<b>Year 3:</b>	<b>Year 4:</b>	<b>Year 5:</b>	<b>Total Project Cost:</b>	<b>Total Not Yet Funded:</b>
<b>Grand Totals</b>	0	700,000	305,000	0	220,000	0	1,225,000	1,225,000

**CITY OF AZTEC 2019-1153**

**A RESOLUTION ADOPTING THE FY 2021-2025 INFRASTRUCTURE CAPITAL IMPROVEMENT PLAN (ICIP)**

**WHEREAS**, the City of Aztec recognizes that the financing of public capital projects has become a major concern in New Mexico and nationally; and

**WHEREAS**, in times of scarce resources, it is necessary to find new financing mechanisms and maximize the use of existing resources; and

**WHEREAS**, systematic capital improvements planning is an effective tool for communities to define their development needs, establish priorities and pursue concrete actions and strategies to achieve necessary project development; and

**WHEREAS**, this process contributes to local and regional efforts in project identification and selection in short and long range capital planning efforts.

**NOW, THEREFORE**, the Aztec City Commission resolves as follows:

1. The City has adopted the attached 2021-2025 Infrastructure Capital Improvement Plan for the Aztec Senior Center, and
2. It is intended that the Plan be a working document and is the first of many steps toward improving rational, long-range capital planning and budgeting for New Mexico's infrastructure.
3. This resolution supersedes Resolution No. 2018-1102

**PASSED, APPROVED and ADOPTED** by the governing body at its meeting of September 10, 2019.

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Mayor Victor C. Snover

ATTEST:

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Karla Sayler CMC

# Staff Summary Report

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<b>MEETING DATE:</b>	September 10, 2019
<b>AGENDA ITEM:</b>	V. CONSENT AGENDA (F)
<b>AGENDA TITLE:</b>	2018 GO Bond Agreement

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<b>ACTION REQUESTED BY:</b>	Angela Watkins, Library Director
<b>ACTION REQUESTED:</b>	Approve the 2018 GO Bond Agreement
<b>SUMMARY BY:</b>	Kathy Lamb

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## **PROJECT DESCRIPTION / FACTS**

- The 2018 G.O. Bond Agreement is the result of November 2018 voter approval of General Obligation Bonds specific to libraries. The total amount approved by voters is \$4,000,000 of which \$29,528.27 is specific to the Aztec Public Library. The funds are available until June 30, 2022.
- The use of GO Bond is governed by NMAC 4.5.8-Title 4 Cultural Resources; Chapter 5 State Library, part 8 Distribution of General Obligation State of NM Bond Funds to Public Libraries. The 2018 G.O. Bonds bill language includes “may be expended for equipment, library furniture, fixtures and supplemental library resource acquisitions, including print, non-print and electronic resources, collaborative library resources and information technology projects, and for the purchase and installation of broadband internet equipment and infrastructure.”
- GO Bond Funds will be distributed on a reimbursement basis. The Aztec Public Library will determine the needs of the library and develop a plan for the use of 2018 G.O Bond funds.

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

- Both city and state procurement requirements will be followed for purchases. In addition, this funding will only be utilized on those items which meet the requirements of the funding agreement.

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

- The funds provided through the Library General Obligation Bonds are to supplement the library funds. The City may not reduce its funding for books or materials as a result of the additional funds provided through the library bonds. If it is determined a reduction has occurred, the library shall be ineligible to receive funds in the next library bond program. NMAC 4.5.8

- The FY19 Adopted Budget, Intergovernmental Fund, Library Department, is established at 35,028.00 which includes the balance of the 2016 G.O. Bond and the 2018 G.O. Bond. The balance available for the 2016 GO Bonds is \$5,522.00 (expire June 2021) and must be expended before funds from 2018 will be available.
- “The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this agreement.”
  - The official representative is the person whom the State Library will contact if there are issues related to the Agreement. If there are questions about reimbursements, e.g., how the GO Bond monies are being spent, the State Library will contact the Library Director first.
  - The grantee representative for the City of Aztec – Library will be Kris Farmer, Acct Tech III.

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**SUPPORT DOCUMENTS:** 2018 GO Bond Agreement

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**DEPARTMENT’S RECOMMENDED MOTION:** Move to APPROVE 2018 GO Bond Agreement

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NEW MEXICO  STATE LIBRARY  
GARREY CARRUTHERS BUILDING

Angela Watkins  
Aztec Public Library  
August 9, 2019

Dear Director,

Please find enclosed two copies of your 2018 General Obligation Bond Agreement. Return the two complete copies, signed with blue ink, to the Development Bureau, New Mexico State Library.

Please note the following:

- **Article III. Notice Provisions and Grantee and Department Designated Representatives** (p. 4) – this should be the person who is contacted if there are concerns with reimbursement issues and/or questions. As always, the library director is included in all correspondence.
- On the signature page (p. 13), under **Grantee**, the person who signs must have authority to enter the Aztec Public Library into contracts with the State.
- **Article VIII. Paper Periodic Reports [Exhibit 1] and Article IX. Request for Payment Procedures and Deadlines [Exhibit 2]** are submitted with each Request for Payment. Continue to send in your supporting documentation, i.e., what you purchased and your proof of payment. Notarization is not required for Exhibit 2.
- **Exhibit 3, the Notice of Obligation** – while not necessarily required, the library or fiscal agent is encouraged to use this form to confirm that anticipated purchases are eligible for reimbursement.

The 4.5.8 NMAC includes definitions for what purchases are eligible for reimbursement:  
<http://164.64.110.134/parts/title04/04.005.0008.html>.

*Please note that the bill language for the 2018 GO Bonds includes: "...for equipment, library furniture, fixtures and supplemental library resource acquisitions, including print, non-print and electronic resources, collaborative library resources and information technology projects, and for the purchase and installation of broadband internet equipment and infrastructure...."*

Additional information is at: <http://nmstatelibrary.org/services-for-nm-libraries/funding-libraries/go-bonds/2018-gobs>

We look forward to working with you to enhance library resources for your community.



Patricia Moore  
GO Bond Consultant  
NMSL Development Bureau

STATE OF NEW MEXICO  
DEPARTMENT OF CULTURAL AFFAIRS  
FUND CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Cultural Affairs, New Mexico State Library Division, hereinafter called the "Department" or abbreviation such as "NMSL", and the City of Aztec, hereinafter called the "Grantee" on behalf of the Aztec Public Library. This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in Chapter 67, Section 10, Paragraph B(1)(a) of New Mexico Laws of 2018, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, NMSA 1978, Section 18-2-4 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law, and NMSA 1978, Section 18-2-4(B) directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system;

WHEREAS, the state librarian promulgated administrative rules to govern the distribution of general obligation bonds, which are compiled as Section 4.5.8 NMAC;

WHEREAS, the Grantee is a library, or fiscal agent for a library, that is eligible for receipt of such funds because it is a local public library, or fiscal agent for a local public library, as defined under Section 4.5.8 NMAC that has filed an approved annual report, or is acting as fiscal agent to a library that has filed an annual report, with the Department;

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

WHEREAS, the Department determined the amount of the Grant based on the criteria described in Rule 4.5.8.8 NMAC ("Distribution of Funds").

AGREEMENT

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

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

A. The project that is the subject of this Agreement is described as follows:

Project No. **A18C5074** for four million dollars (\$4,000,000.00)

APPROPRIATION REVERSION DATE: 30-JUN-2022

Laws of 2018, Chapter 67, Section 10, Paragraph B(1)(a), four million dollars (\$4,000,000), for equipment, library furniture, fixtures and supplemental library resource acquisitions, including print, non-print and electronic resources, and for the purchase and installation of broadband internet equipment and infrastructure at nontribal public libraries statewide.

Contingent upon the State of New Mexico's successful sale of general obligation bonds, the Grantee's total reimbursements shall not exceed, Twenty Nine Thousand Five Hundred Twenty Eight Dollars and Twenty Seven Cents (\$29528.27) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, which equals zero dollars (\$0.00) which equals, Twenty Nine Thousand Five Hundred Twenty Eight Dollars and Twenty Seven Cents (\$29528.27) (the "Adjusted Appropriation Amount"). If the State of New Mexico sells some portion of the general obligation bonds associated with the four million dollars, Grantee's total reimbursements shall not exceed an amount proportional to the reduced total sale (i.e., if only three million of the four million dollar appropriation, then Grantee's total reimbursements shall not exceed three fourths of the total reimbursements described in this paragraph, above).

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

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I (A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

A. Upon the Effective Date of this Agreement, or upon the State of New Mexico's sale of the general obligation bonds authorized in 2018, whichever comes last, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods

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

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

have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

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

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
  - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
  - c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
  - d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

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

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: City of Aztec on behalf of the Aztec Public Library

Name: Kris Farmer

Title: Acct III

Address: 201 W Chaco, Aztec NM 87410

Email: kfarmer@aztecnm.gov

Telephone: 505-334-7651

FAX: 505-334-7649

Department: New Mexico State Library

Name: Development Bureau

Address: 1209 Camino Carlos Rey, Santa Fe, NM 87507

Email: [sl.development@state.nm.us](mailto:sl.development@state.nm.us)

Telephone: 800-340-3890

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

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

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

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

#### ARTICLE V. EARLY TERMINATION

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

Early Termination includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE VII. AMENDMENT

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

#### ARTICLE VIII. REPORTS

##### A. Paper Periodic Reports

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

The Paper Periodic Report shall be due and submitted with each of Grantee's Requests for Payment to the Department beginning with the submission of the first Request for Payment following execution of this Agreement by the Department and ending upon the Grantee's submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days advance, written notice of any change to the reporting period.

#### B. Paper Final Report

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

#### C. Paperless Reporting

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due at the time of submission of each of Grantee's Requests for Payment to the Department beginning with the submission of the first Request for Payment following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

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

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

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

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee's designated representative in Article III herein, that the expenditures are valid and were received by the Grantee as services rendered by a third party or items of

tangible personal property received by the Grantee for the implementation of the Project.

- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

**B. Deadlines**

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

- (i) Twenty (20) days from the end of the calendar quarter in which the Grantee incurred the expense, if total unreimbursed expenditures at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Ninety (90) days before the Reversion Date.

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

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

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a

contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
- (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

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

- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

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

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

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

#### ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

#### ARTICLE XIII. LIABILITY

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

#### ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement and upon the State of New Mexico’s sale of general obligation bonds authorized in 2018 in the amount Legislature appropriated in 2018. If sufficient appropriations and authorization are not made by the Legislature, or if less than the appropriated amount of general obligation bonds are sold, the City of Aztec may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Aztec’s decision as to whether sufficient appropriations are available or whether the appropriated amount of general bonds are sold shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Aztec or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Aztec or the Department”

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

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

“This contract is funded in whole or in part by funds made available under a Grant Agreement. Should there be an early termination of the grant agreement, or should the State of New Mexico sell general obligation bonds in an amount less than the amount the Legislature appropriated in 2018, the City of Aztec may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Aztec’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
  2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
  3. timely submit all required financial reports to its budgetary oversight agency (if any); and

4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

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

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

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

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

ATTEST:

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

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

By: Victor C. Snover  
(Type or Print Name)

Its: Mayor  
(Type or Print Title)

September 10, 2019  
Date

DEPARTMENT OF CULTURAL AFFAIRS

APPROVED AS TO FORM:

\_\_\_\_\_  
By: Debra Garcia y Griego, Cabinet Secretary

\_\_\_\_\_  
J. Nikki Unsicker, City Attorney

\_\_\_\_\_  
Date

September 10, 2019  
Date

\_\_\_\_\_  
By: Peter Ives, DCA General Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Greg Geisler, CFO/Administrative Services Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Eli Guinnee, State Librarian

\_\_\_\_\_  
Date

STATE OF NEW MEXICO  
2018 CAPITAL GRANT PROJECT  
PAPER PERIODIC/FINAL REPORT  
EXHIBIT 1

PERIODIC REPORT       FINAL REPORT

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

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

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

*A. Third Party Obligations*

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

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

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

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

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

*B. Project Phase*

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

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

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

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

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

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

PERIODIC REPORT

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

FINAL REPORT

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

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

\_\_\_\_\_  
Date

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

<b>I. Grantee Information</b> (Make sure information is complete & accurate)	<b>II. Payment Computation</b>			
A. Grantee: _____	A. Grant Amount: _____			
B. Address: _____ <small>Complete Mailing, including Suite, if applicable</small>	B. AIPP Amount (if Applicable) _____			
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">City</td> <td style="width: 33%; border: none;">State</td> <td style="width: 33%; border: none;">Zip</td> </tr> </table>	City	State	Zip	C. Funds Requested to Date: _____
City	State	Zip		
C. Phone No: _____	D. Amount Requested this Payment: _____			
D. Grant No: _____	E. Grant Balance: <span style="float: right;">\$0.00</span>			
E. Project Title: _____	F. <input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if 1st draw)			
F. Grant Expiration Date: _____	G. Payment Request No. _____			

<b>III. Fiscal Year Expenditure Period Ending:</b>	(Jan-Jun) <input type="checkbox"/>	Fiscal
(check one)	(Jul-Dec) <input type="checkbox"/>	Year

**IV. Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

<b>Grantee Fiscal Officer</b>  Printed Name _____ Date: _____  SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 20____	<b>Grantee Representative</b>  Printed Name _____ Date: _____  SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 20____
Notary Public _____ My Commission expires _____	Notary Public _____ My Commission expires _____

**(Department Use Only)**

Vendor Code: _____	Fund No.: _____				
Loc No.: _____					
<table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">Division Fiscal Officer</td> <td style="width: 30%;">Date</td> </tr> </table> <p style="font-size: small;">I certify that the Grantee financial and vendor file information agree with the above submitted information.</p>	Division Fiscal Officer	Date	<table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">Division Project Manager</td> <td style="width: 30%;">Date</td> </tr> </table> <p style="font-size: small;">I certify that the Grantee records and related appropriation laws agree with the above submitted information.</p>	Division Project Manager	Date
Division Fiscal Officer	Date				
Division Project Manager	Date				

STATE OF NEW MEXICO  
2018 CAPITAL GRANT PROJECT  
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE

EXHIBIT 3

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

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

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

SUBJECT: Notice of Obligation to Reimburse Grantee

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

As the designated representative of the Department for Grant Agreement number [GOB13-12-1232] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

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

Third Party Obligation Amount: \_\_\_\_\_  
Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

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

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

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

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

\_\_\_\_\_

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

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

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

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

## ATTACHMENT A

NMSA 1978, Section 18-2-4(I) directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Section 18-2-4(B) directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system. Within these powers, the state librarian passed certain administrative rules to govern the distribution of general obligation bonds. Thus, under Section 4.5.8.8 of the New Mexico Administrative Code, this Agreement includes the following additional terms:

### § 4.5.8.8. DISTRIBUTION OF FUNDS

Money from the library bond program shall be distributed in the following manner:

A. Notification: When the library bond program funds are approved by the voters, the state library shall send a letter of notification and acceptance agreement to all public libraries informing them of their eligibility to receive the funds and the amount of funds they are eligible to receive. The agreement must be signed and returned to the state library one-hundred twenty (120) days before the start of the authorized expenditure period. Libraries that do not return the signed agreement within the required time period shall not be eligible to receive funds. Upon receipt of the agreements, the state library shall calculate the final allocation and the libraries shall be notified of any changes within ninety (90) days before the authorized expenditure period.

B. Allocation: The amount allocated to eligible public libraries is dependant upon the amount of bond funds approved by the state legislature and approved by the voters in a bond election. The state library may publish and make publicly available a list showing the bond fund allocations for each eligible library.

C. Criteria for allocation of funds: The state librarian shall establish the amount of funds to be allocated to each eligible library system using the following criteria.

- (1) Library shall be a local public library.
- (2) Library shall have filed an approved annual report with the state library.
- (3) Library shall return a signed agreement accepting the funds and agreeing to abide by the terms and conditions of this rule.
- (4) Non-profit libraries shall have an agreement with a local funding authority to act as their fiscal agent for these funds.
- (5) The library's and the local funding authority's accounting records shall be sufficient to document expenditures of library bond program money. At the sole discretion of the state library, such records may be audited annually or as needed by the state library or its designated representative.
- (6) County population and the library's legal service area shall be used to determine the amount of library bond program funds that shall be allocated to each eligible library.

D. Distribution of funds: Money from the library bond program funds shall be distributed in the following order:

(1) library system allocation: each eligible local public library system, including rural library services facilities, shall receive a fixed allocation dependent upon the total library bond funds available;

(2) per capita allocation: remaining library bond funds shall be distributed to each county on a per capita basis using the latest U. S. census bureau estimates, as follows: (a) each library shall receive funds based upon the legal service area population and proportional credit for the unassigned population in each county; and, (b) local public libraries that are the only local public library in their county shall receive the entire per capita allocation for the county.

(1) Library's book or materials budget shall not be reduced by the local funding authority as a result of eligibility for library bond program funds.

(2) Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds in the next library bond program.

# Staff Summary Report

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<b>MEETING DATE:</b>	September 10, 2019
<b>AGENDA ITEM:</b>	V. CONSENT AGENDA (G)
<b>AGENDA TITLE:</b>	Resolution 2019-1154 and NMDOT Agreement Control Number C5193387 (East Aztec Arterial)

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<b>ACTION REQUESTED BY:</b>	Finance Department
<b>ACTION REQUESTED:</b>	Approval of Resolution 2019-1154 and NMDOT Agreement Control Number C5193387
<b>SUMMARY BY:</b>	Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

- The 2019 New Mexico Legislative Regular Session approved the Capital Outlay Bill which included \$3,158,000 for the East Aztec Arterial project.
- The NMDOT Cooperative Agreement expires June 30, 2023 (reversion date); requires 5% (\$157,900) of the funding to be obligated within 6 months of agreement acceptance and 85% to be expended six months prior to the reversion date.
- The agreement requires a resolution identifying official representative, fiscal officer, ownership, liability and maintenance of the project.
- Consistent with changes to capital appropriations, funds may not be obligated without NMDOT approval (Notice of Obligation) and Capital reporting database (CPMS) must be updated monthly.

## PROCUREMENT

- N/A

## FISCAL IMPACTS

- Acceptance of the funding agreement is necessary for the East Aztec Arterial project. This agreement allows funding to be used for “plan, design, and construct the east Aztec arterial project”. To meet the 5% obligation requirement (March 2020), funds may be utilized for costs associated in final design changes, NMDOT coordination and bid preparation.

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<b>SUPPORT DOCUMENTS:</b>	Resolution 2019-1154 NMDOT Cooperative Agreement C5193387
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**DEPARTMENT’S RECOMMENDED MOTION:** Move to Approve Resolution 2019-1154 and NMDOT Cooperative Agreement C5193387.

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Contract Number: \_\_\_\_\_  
Vendor Number: 0000054308  
Control Number: C5193387

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

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between the Department of Transportation, hereinafter called the “Department” or abbreviation such as “NMDOT”, and City of Aztec, hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2019, Chapter 277, Section 40, Subsection 117, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

**AGREEMENT**

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

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

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID D3387 NMDOT Control Number C5193387 **\$3,158,000**

APPROPRIATION REVERSION DATE: 6/30/2023

Laws of 2019, Chapter 277, Section 40, Subsection 117, Three Million One Hundred Fifty Eight Thousand Dollars and No Cents (\$3,158,000), to plan, design and construct the east Aztec arterial route in Aztec in San Juan county .

The Grantee’s total reimbursements shall not exceed Three Million One Hundred Fifty Eight Thousand Dollars and No Cents \$3,158,000 (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP

amount”)<sup>1</sup>, if applicable, , which equals Three Million One Hundred Fifty Eight Thousand Dollars and No Cents \$3,158,000 (the “Adjusted Appropriation Amount”).

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

This project is referred to throughout the remainder of this Agreement as the “Project”; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the “Project Description.” Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

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

- (i) Irrespective of any Notice of Obligation, the Grantee’s expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee’s Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee’s expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as “Third Party Obligations”; and
- (iv) The Grantee’s submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

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

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

- a. must be approved by the applicable oversight entity (if any) in accordance with law; or
- b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

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

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

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

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

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

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

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

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Aztec  
Name: ~~Kathy Lamb~~ Steve Mueller  
Title: ~~Finance Director~~ City Manager  
Address: 201 W. Chaco St., Aztec, New Mexico 87410  
Email: ~~klamb@aztecnm.gov~~ smueller@aztecnm.gov  
Telephone: ~~505-334-7653~~ 505-334-7602

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF AZTEC  
Name: KATHY LAMB  
Title: FINANCE DIRECTOR  
Address: 201 W CHACO AZTEC NM 87410  
Email: klamb@aztecnm.gov  
Telephone: 505 334-7653

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 5 Office  
Name: Stephanie Medina  
Title: Local Government Road Fund Coordinator  
Address: P.O. Box 4127, Santa Fe, NM 87502  
Email: Stephanie.Medina@state.nm.us  
Telephone: 505-660-6357

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

**ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **6/30/2023** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

## **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

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

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

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

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

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

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

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

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

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

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

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

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

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

### **ARTICLE VII. AMENDMENT**

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

### **ARTICLE VIII. REPORTS**

#### **A. Database Reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

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

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

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

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

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

**C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

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

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

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

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

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

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

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

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

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee’s sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department’s failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the

SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

**GRANTEE**

SEE ATTACHED SIGNATURE PAGE  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

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

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

\_\_\_\_\_  
Date

**DEPARTMENT OF TRANSPORTATION**

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

Its: Cabinet Secretary or Designee

\_\_\_\_\_  
Date

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

Cynthia A Christ  
By: Cynthia Christ

Its: Assistant General Counsel

5-10-19  
Date

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

**GRANTEE: CITY OF AZTEC**

\_\_\_\_\_  
Victor C. Snover, Mayor

\_\_\_\_\_  
Date Signed

ATTEST:

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

\_\_\_\_\_  
Date Signed

APPROVED AS TO FORM:

\_\_\_\_\_  
J. Nicci Unsicker, City Attorney

\_\_\_\_\_  
Date Signed

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

<b>I. Grantee Information</b>				<b>II. Payment Computation</b>			
<i>(Make sure information is complete &amp; accurate)</i>							
A. Grantee:				A. Payment Request No.			
B. Address:				B. Grant Amount:			
<i>(Complete Mailing, including Suite, if applicable)</i>				C. AIPP Amount <i>(If Applicable)</i> :			
				D. Funds Requested to Date:			
				E. Amount Requested this Payment:			
				F. Reversion Amount <i>(If Applicable)</i> :			
				G. Grant Balance:			
				H. <input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB <i>(attach wire if first draw)</i>			
				I. <input type="checkbox"/> Final Request for Payment <i>(if Applicable)</i>			
C. Phone No:							
D. Grant No:							
E. Project Title:							
F. Grant Expiration Date:							
<b>III. Fiscal Year :</b>							
<i>(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)</i>							
<b>IV. <input type="checkbox"/> Reporting Certification:</b>							
<i>I hereby certify to the best of my know ledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance w ith Article VIII of the Capital Outlay Grant Agreement.</i>							
<b>V. <input type="checkbox"/> Compliance Certification:</b>							
<i>Under penalty of law , I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.</i>							
<b>Grantee Fiscal Officer</b>				<b>Grantee Representative</b>			
<i>or Fiscal Agent (if applicable)</i>							
Printed Name				Printed Name			
Date:				Date:			
<b>(State Agency Use Only)</b>							
Vendor Code:		Fund No.:		Loc No.:			
I certify that the State Agency financial and vendor file information agree with the above submitted information.							
Division Fiscal Officer				Division Project Manager			
Date				Date			

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE**  
**EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee [# 1]**

DATE: [ \_\_\_\_\_ ]

TO: Department Representative: [ \_\_\_\_\_ ]

FROM: Grantee: [ \_\_\_\_\_ ]

Grantee Official Representative: [ \_\_\_\_\_ ]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: [ \_\_\_\_\_ ]

Grant Termination Date: [ \_\_\_\_\_ ]

As the designated representative of the Department for Grant Agreement number [ \_\_\_\_\_ ] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [ \_\_\_\_\_ ]

Third Party Obligation Amount: [ \_\_\_\_\_ ]

Vendor or Contractor: [ \_\_\_\_\_ ]

Third Party Obligation Amount: [ \_\_\_\_\_ ]

Vendor or Contractor: [ \_\_\_\_\_ ]

Third Party Obligation Amount: [ \_\_\_\_\_ ]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [ \_\_\_\_\_ ]

The Amount of this Notice of Obligation: [ \_\_\_\_\_ ]

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

The Total Amount of all Notices of Obligation to Date: [ \_\_\_\_\_ ]

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: [ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]

Signature: [ \_\_\_\_\_ ]

Date: [ \_\_\_\_\_ ]

<sup>1</sup> Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

## Attachment A

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

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

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

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

**CITY OF AZTEC**  
**Resolution 2019-1154**

**A Resolution Defining Project Scope and Support for Funding Through the  
New Mexico Department of Transportation for North Main Avenue,  
Project Control No. C5193387**

- WHEREAS,** the City of Aztec has been appropriated funding through the New Mexico Department of Transportation, Capital Appropriation, Laws of 2019, Chapter 277, Section 40, Sub Section 117; and
- WHEREAS,** the New Mexico Department of Transportation (NM DOT) will administer these funds and has assigned this project the Control Number (CN) C5193387; and
- WHEREAS,** the funding appropriated is in the amount of \$3,158,000, has a reversion date of June 30, 2023 and has been included in the City of Aztec FY2020 Adopted Annual Budget; and
- WHEREAS,** the City of Aztec may utilize the funds to plan, design, and construct the east Aztec arterial route in Aztec in San Juan county; and
- WHEREAS,** the City of Aztec agrees to assume responsibility for the scope of this project; and
- WHEREAS,** the project shall be owned by the City of Aztec and will assume liability and responsibility for maintenance of the east Aztec arterial project; and

**NOW, THEREFORE,** be it resolved as follows:

1. The Finance Director is authorized as the City's fiscal officer.
2. The City Manager is designated as the City's official representative.
3. The Mayor is authorized to execute agreement(s) associated with CN C5193387.

**ADOPTED AND APPROVED** this 10<sup>th</sup> day of September 2019.

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Victor C. Snover, Mayor

ATTEST:

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Karla Saylor, City Clerk

# Staff Summary Report

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<b>MEETING DATE:</b>	September 10, 2019
<b>AGENDA ITEM:</b>	X. Business Item (A)
<b>AGENDA TITLE:</b>	Final Adoption of Ordinance 2019-494 Amending Chapter 21 Solid Waste and Recyclables

---

<b>ACTION REQUESTED BY:</b>	City Staff
<b>ACTION REQUESTED:</b>	Approval of Final Adoption of Ordinance 2019-494 Amending Chapter 21 Solid Waste and Recyclables
<b>SUMMARY BY:</b>	Delain George

---

## **PROJECT DESCRIPTION / FACTS**

- There have been no changes made to Ordinance 2019-494 after the Intent to Adopt the Ordinance was approved by City Commission on August 13, 2019.
- There have been no comments related specifically to Ordinance 2019-494 after the Intent to Adopt the Ordinance was approved by City Commission on August 13, 2019.
- Chapter 21 – Solid Waste has not been updated since 2008 and is in need of a revision.
- February 2019, a Solid Waste Management contract was awarded to Waste Management of New Mexico to be the Solid Waste provider for the City of Aztec.
- The proposed ordinance clearly defines items related to solid waste and recycling, previous ordinance had no mention of recycling.
- It defines classification for recycling fees; fees are stated in Chapter 16. The fee for curbside recycling was made mandatory for all residents whether they choose to participate in the recycling program or not. This regulation has been defined to the amended ordinance.
- This ordinance also allows Community Development Department to determine placement of carts and dumpsters, especially when the placement of a trash container may create a nuisance or safety hazard for pedestrian or vehicular traffic.

## **PROCUREMENT**

Not Applicable

## **FISCAL IMPACTS**

Not Applicable

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**SUPPORT DOCUMENTS:** Chapter 21 (existing); Chapter 21 as proposed; Ordinance 2019-494

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Final Adoption of Ordinance 2019-494 Amending Chapter 21 Solid Waste and Recyclables

---

**City of Aztec  
Ordinance 2019-494**

**Amending Chapter 21 Solid Waste and Recyclables**

**WHEREAS:** The City of Aztec has contracted with a new solid waste management company; and

**WHEREAS:** The City of Aztec has not updated Chapter 21 – Solid Waste since 2008; and

**WHEREAS:** Staff has determined the need to update Chapter 21 so that it addresses current solid waste disposal and recyclables,

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the City of Aztec, New Mexico that Ordinance 2019-494 updates Chapter 21 Solid Waste and Recyclables as attached.

**PASSED, APPROVED, SIGNED AND ADOPTED THIS** \_\_\_\_\_ day of \_\_\_\_\_ 2019 by the Aztec City Commission, City of Aztec, New Mexico.

\_\_\_\_\_  
Mayor Victor C. Snover

ATTEST:

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

APPROVE AS TO FORM:

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

Advertised Date of Final Adoption: \_\_\_\_\_

Effective Date of Ordinance: \_\_\_\_\_

**Chapter 21  
SOLID WASTE AND RECYCLABLES**

	<u>Page</u>
<b>ARTICLE I. IN GENERAL.....</b>	<b>21-2</b>
Sec. 21-1. Penalty.....	21-2
Sec. 21-2. Definitions.....	21-2
Sec. 21-3. Cleanliness of Property.....	21-7
Sec. 21-5. Nuisance on Property.....	21-7
Sec. 21-6. Dumping of Litter.....	21-7
Sec. 21-7. Handbill Distribution.....	21-8
Sec. 21-8. Burning.....	21-9
Sec. 21-9. Cleanliness of Parking Lots.....	21-9
Sec. 21-10. Containment of Refuse.....	21-9
Secs. 21-11 to 21-20 Reserved.....	21-9
<b>ARTICLE II. COLLECTION AND DISPOSAL SERVICE .....</b>	<b>21-10</b>
Sec. 21-21. City's Authority.....	21-10
Sec. 21-22. Responsibility of Owner and Occupant of Premises.....	21-10
Sec. 21-23. Refuse Collection Generally.....	21-10
Sec. 21-24. Classification of Fees for Solid Waste and Curbside Recycling Service.....	21-11
Sec. 21-25. Recycling Program.....	21-13
Sec. 21-26. Preparation of Refuse and Recyclable Materials for Collection.....	21-13
Sec. 21-27. Collection; Location; Time of Placement.....	21-14
Sec. 21-28. Dead Animals.....	21-16
Sec. 21-29. Construction Sites and Transportation of Materials.....	21-16
Sec. 21-30. Transportation of Refuse.....	21-17
Sec. 21-31. Airtight Appliances, Refrigerators or Containers.....	21-17
Sec. 21-32. Scavenging.....	21-17

## Chapter 21 SOLID WASTE AND RECYCLABLES

### ARTICLE I. IN GENERAL

#### **Sec. 21-1. Penalty.**

Violations of this chapter are punishable as provided in Section 1-8.

#### **Sec. 21-2. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

##### **Ashes**

The residue from the burning of wood, coal, coke or other combustible material.

##### **Bag**

A closed container of moisture-resistant plastic, paper or other pliable material which is waterproof and capable of holding solid waste during normal handling conditions and which is of sufficient strength to contain the contents put into it without breaking or rupturing.

##### **Brush**

A volunteer growth of bushes and such as is growing out of place in the location where growing, and shall include all cuttings from trees and bushes; also, high and rank vegetable growth which may conceal filthy deposits.

##### **City Manager or Designee**

The city manager may employ the number of persons necessary to maintain efficient garbage collection service and shall designate the code enforcement officer as the person responsible for the enforcement of this article. Nothing in this article shall be construed as delegating any rule-making authority of the city to any person other than the city manager within the administration of the city.

##### **Collection Agency**

The city, or other collectors authorized by the city, shall collect all refuse within the city. No person, except as provided in this article, shall collect or gather refuse within the city.

##### **Combustible Trash**

Includes paper, cardboard, leaves, straw, grass clippings, sawdust, shavings, small tree and shrub clippings, and all similar flammable or combustible material which has been discarded.

##### **Commercial Container**

Metal or plastic containers supplied by contractor affording capacity to service a customer so as to prevent spillage, unsightly and unsanitary conditions.

##### **Construction and Demolition Debris**

Materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing materials, pipe,

gypsum wallboard and lumber from the construction or demolition of a structure as part of a construction or demolition project, and includes rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing or land development operations for a construction project, but if construction and demolition debris is mixed with any other types of solid waste, whether or not originating from the construction project, it loses its classification as construction or and demolition debris.

**Contractor**

Any individual or business that the city has an existing legal and exclusive contract for pickup, hauling or disposal of all solid waste, refuse and recyclables within the city.

**Curbside**

That portion of the right-of-way adjacent to paved or traveled roadways.

**Debris**

Automobile frames, loose brush, dirt, concrete, rocks, bricks, lumber, plaster, sand, gravel, or other waste construction materials.

**Garbage**

Includes any and all accumulation of putrescible or decomposable animal and vegetable wastes resulting from the process, storage, sale, handling, preparation, cooking, serving or consumption of food, of any kind.

**Handbill**

A printed advertisement or other notice distributed by hand.

**Hazardous Waste**

1. All waste defined or characterized as hazardous by the federal Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), as amended, including the Resource Conservation and Recovery Act of 1976 and all future amendments thereto, or regulations promulgated there under and
2. All waste defined or characterized as hazardous by the principal agencies of the State of New Mexico having jurisdiction. Hazardous Waste shall not include incidental household Hazardous Waste or Small Quantity Generator Waste (as defined by the Solid Waste Disposal Act) that is commingled with refuse.

**Home Composting**

The controlled decomposition of organic material, including, without limitation, yard trimming and kitchen scraps, into humus by any person owning or occupying any place or premises in the City of Aztec.

**Litter**

Scattered refuse or rubbish.

**Miscellaneous Special Waste**

Any waste meeting the descriptions which follow is a “special waste,” but is referred to as “miscellaneous special waste”:

1. Chemical waste from a laboratory. (This is limited to discarded containers of laboratory chemicals, lab equipment, lab clothing, debris from lab spills, or cleanup and floor sweepings)

2. Articles, equipment and clothing containing or contaminated with polychlorinated biphenyls (PCB's). (Examples are: PCB capacitors or transformers, gloves or aprons from draining operations, empty drums that formerly held PCB's, etc. Note: PCB solids, semi-solids or liquids delivered in bulk or drums are not "miscellaneous special waste" but are "special waste.")
3. "Empty" containers of waste commercial products or chemicals. (This applies to a portable container which has been emptied, but which may hold residuals of the product or chemical. Examples of containers are: portable tanks, drums, barrels, cans, bags, liners, etc. A container shall be determined "empty" according to the criteria specified at 40 C.F.R. 261.7).
4. Asbestos containing waste from building demolition or cleaning. (This applies to asbestos bearing waste insulation materials, such as wall board, wall spray coverings, pipe insulation, etc. Note: "special waste," but not a "miscellaneous special waste.")
5. Commercial products or chemicals: off-specification, outdated, contaminated or banned. (This also includes products voluntarily removed from the market place by a manufacturer or distributor, in response to allegations of adverse health effects associated with product use)
6. Residue and debris from cleanup of spills or releases of a single chemical substance or commercial product or a single waste which would otherwise qualify as a miscellaneous special waste. (Note: residue and debris from spills or releases not meeting this definition are "special waste" not "miscellaneous special waste.")
7. Waste from a medical practitioner, hospital, nursing home, medical testing laboratory, mortuary, taxidermist, veterinarian, veterinary hospital or animal testing laboratory. This includes any waste produced at these facilities, except residue from incinerators, septic tank pumpings or wastewater treatment sludges which are all "special wastes," but not "miscellaneous special wastes." (Note: discarded chemicals from the above facilities should be treated as "chemical waste from a laboratory," as provided in subsection 5.a. above.)
8. Animal waste and parts from slaughterhouses or rendering plants. (This excludes wastes from fur or leather products manufacturers, which are "special wastes.")
9. Waste produced by the mechanical processing of fruit, vegetables or grain (This includes such wastes as finds, hulls, husks, pods, shells and chaff. Food processing wastes, which are aqueous, or sludge, which have been contaminated with dyes, additives or preservatives are "special waste," but not "miscellaneous special waste.")
10. Pumpings from septic tanks used exclusively by dwelling units. (Single-family homes, duplexes, apartment buildings, hotels or motels.)
11. Sludge from a publicly owned sewage treatment plant serving primarily domestic users. (i.e. with no substantial industrial or chemical (influent.)
12. Grease trap wastes from residences, restaurants, or cafeterias not located at industrial facilities.
13. Wash water wastes from commercial car washes. (Note: this does not include facilities used for washing the exterior of bulk chemical or waste tank trucks or for washing out the interior of any truck; such wastes are "special wastes.")
14. Wash water wastes from commercial laundries or laundromats. (Note: this does not include waste from a dry cleaning facility or waste from a commercial laundry used by an industry to wash chemical-contaminated clothing from its workers; such wastes are "special wastes.")
15. Chemical-containing equipment removed from service. (Example: cathode ray tubes, batteries, fluorescent light tubes, etc.)

16. Waste produced from the demolition or dismantling of industrial process equipment or facilities contaminated with chemicals from the process. (Note: chemicals or wastes removed or drained from such equipment or facilities are “special wastes.”)
17. Closed cartridge filters from dry-cleaning establishments. (Such filters being used to filter used dry cleaning fluids or solids.)
18. Tires.

**Overage**

Defined as Refuse or Recyclable Materials exceeding its containers' intended capacity, or Refuse or Recyclable Materials placed on top of or in the immediate vicinity of the container.

**Person**

Every person, firm or corporation owning, leasing, living within, conducting a place of business within, or controlling any house, single or multiple family residence unit, shop, hotel, restaurant, market, store, warehouse, apartment or tenement building, or other establishment or place of business within the city.

**Prohibited Waste**

Items considered hazardous, such as radioactive materials, car batteries, chemicals, asbestos, pesticides, herbicides, medical waste or liquids.

**Qualified Physically Disabled Resident**

A residential unit where there are no residents who are physically capable of moving a residential container (polycart) to and from the standard curbside location for collection.

**Recyclable Materials**

Items designated by the city or its contractor as allowable materials acceptable for recycling.

**Refuse**

All putrescible and non-putrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial, community, and municipal garbage, trash, paper, rubbish, ashes, and demolition and construction wastes. The term “refuse,” as used herein does not include Hazardous Waste, Special Waste, or Miscellaneous Special Waste as defined in this article; designated waste or contaminants that may be injurious to personnel engaged in solid waste handling, including but not limited to infectious waste, sewage and body wastes, acids, explosives, radioactive material and septic tank pumping, large mechanical devices; or any materials that are, or in the future become, prohibited from receipt, handling or disposal as municipal solid waste by state, federal or local law, regulation, rule, code, ordinance, order, permit, or permit condition.

**Residential Premises**

A dwelling within the City limits occupied by person or group of person comprising not more than four (4) families. A residential premise may be deemed occupied when either water or electric services are being supplies thereto. A dwelling, whether of single or multi-level construction; consisting of four or fewer units shall be treated as a residential premises.

**Residential Waste**

Garbage or trash generated by a resident and places curbside for the regular collection at a residential premise, but does not include unacceptable waste, debris or bulky waste.

**Rubbish**

Includes but is not limited to all nonputrescible solid wastes, excluding ashes, combustible and noncombustible wastes such as paper, cardboard, cans, wood, yard clippings, leaves, dirt, bedding, weeds, litter, crockery, glass, glassware and similar materials.

**Ruins**

The remains of something collapsed, dilapidated or destroyed.

**Solid waste**

Solid or semisolid discarded material, including but not necessarily limited to ashes, combustible trash, garbage, refuse and rubbish.

**Special Waste**

Any waste from a non-residential source, meeting any of the following descriptions: A containerized waste (e.g., a drum barrel, portable tank, box, pail, etc.), waste transported in a bulk tanker, liquid waste, sludge waste, waste from an industrial process, waste from a pollution control process, residue and debris from the cleanup of a spill or release of chemical substances, commercial products, contaminated soil, water, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, or reclamation.

**Trash**

All household refuse other than garbage, debris, loose brush and bulky waste; trash shall include grass, yard clippings, weeds, heavy accumulations of newspaper and magazines, recyclable materials, old clothes and other household trash of like kind, but shall not include unacceptable waste.

**Unacceptable or Unauthorized Waste**

Waste which is prohibited from disposal at a sanitary landfill by state, federal and/or local laws and regulations or hazardous waste, special waste, dead animals, except for animals euthanized under authority and direction of contractor, appliances containing chlorofluorocarbons (CFC's) that do not bear a certification tag that shows the CFC's have been properly recovered in accordance with federal and/or state laws. Includes such materials as florescent bulbs, mercury containing products, oil-based paint, latex paint (unless dry), oils, petroleum products, flammable products or explosives.

**Unhealthy or Unsanitary Site**

A site where conditions represent a threat to human health and public safety, due to accumulations of waste material or frequency of service.

**Unightly Site**

A site that represents a visual blight to the surrounding area.

**Weeds**

An unsightly, useless, troublesome or injurious herbaceous plant, when such plant is out of place at the location where growing, and includes all rank vegetable growth which emits unpleasant or noxious odors, and, also, high and rank vegetable growth that may conceal filthy deposits and any plant found to be non-native, undesirable or that opposes the management objectives of the land as defined by New Mexico State University's Weeds

Information website, and the Natural Resources Conservation Services (NRCS) list of invasive species.

**Wreckage**

The broken, disrupted and disordered parts or material from a disabled, collapsed, destroyed or dilapidated structure, vehicle or other object.

**Yard Waste**

Leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative materials not greater than six inches in diameter that result from landscaping maintenance. The term does not include stumps, roots or shrubs with intact root balls.

**Sec. 21-3. Cleanliness of Property.**

It shall be unlawful for the owners or occupants of commercial or residential land of all kinds, including undeveloped land, to fail to maintain such property, including sidewalks, curbs, parking and adjacent rights-of-way, including alleys, in a clean and litter-free manner.

**Sec. 21-4. Sweeping Litter onto Streets, Alleys or Sidewalks.**

It shall be unlawful for any person to sweep litter, debris or yard waste onto the streets, alleys or sidewalks from adjacent property.

**Sec. 21-5. Nuisance on Property.**

It shall be unlawful for an owner or occupant to create or allow a nuisance to remain upon his property or any lot occupied by him. Such nuisance may include decaying vegetable or animal matter that causes an offensive odor or health hazard.

**Sec. 21-6. Dumping of Litter.**

1. It shall be unlawful to dump, deposit, drop, throw, discard, leave, cause or permit the dumping, depositing, dropping, throwing, discarding or leaving of litter upon any public or private property in this city or upon or into any river, lake, pond or other stream or body of water or upon or into any roadside, ditch, glade, or arroyo in this city, unless:
  - 1) The property has been designated by the city for the disposal of litter; or
  - 2) The litter is placed in a receptacle or other container intended by the owner or tenant of that property for the deposit of litter.
2. All complaints of alleged illegal dumping or disposal of litter in violation of this section, shall be investigated by the city. Enforcement officers shall, wherever practicable, inspect any illegally disposed litter found on any street, alley, public place, private place, or trash receptacle where trash was deposited by others not in control or not having ownership of such property, for any traceable ownership. Any personal identification or traceable ownership found in illegally dumped litter shall constitute prima facie evidence that the

person whose identifying information is found, is presumed as the owner of such litter who dumped or placed such litter at the point where the violation occurred.

### **Sec. 21-7. Handbill Distribution.**

It shall be unlawful to:

1. Place, throw or deposit any handbill in or upon any sidewalk, street or other public place within the city;
2. Place, throw or deposit any handbill in or upon any vehicle; provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof a noncommercial handbill to any occupant of a vehicle willing to accept it;
3. Place, throw or deposit any handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant;
4. Place, throw, deposit or distribute any handbill upon any private premises if requested by anyone thereon not to do so or if there is placed on such premises in a conspicuous position near the entrance thereof, a sign bearing the words "no trespassing," "no peddlers or solicitors," "no advertisement," or any similar notice, indicating in any manner that the occupants of the premises do not desire to be molested or to have the right of privacy disturbed or have any such handbill left upon such premises;
5. Place, throw, deposit or distribute any handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person then present in or upon such private premises. However, if inhabited private premises are not posted, as provided in this section, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or upon the sidewalks, streets or other public places within the city, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations. This subsection shall not apply to the distribution of mail by the United States or to newspapers, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements upon any street, sidewalk or other public place or adjacent private property;
6. Throw out, drop or deposit within the city any litter, handbill or any other object from an aircraft or vehicle; or
7. Post or affix any notice, poster or other paper or device calculated to attract the attention of the public to any lamppost, public utility pole, tree in the public right-of-way, or upon any public structure or building.

**Sec. 21-8. Burning.**

The burning of trash, brush, rubbish, refuse, leaves, weeds, grass or solid waste of any nature within the city shall be prohibited without a special burn permit issued by the city fire department. The permit holder must comply with the conditions set forth in the permit and with all applicable state environmental regulations.

**Sec. 21-9. Cleanliness of Parking Lots.**

1. It is the obligation of the city to provide receptacles for the deposit of litter in municipal parks and parking areas and of the owner or occupant of an establishment with private parking lots to provide such receptacles.
2. The Community Development Department shall have the authority to determine the number of receptacles necessary to provide proper containerization on both public and private parking lots. All such receptacles shall be properly weighted or designed to the specifications set forth by the Community Development department as necessary to prevent spillage.
3. It shall be the responsibility of the owner or manager of each public or private parking lot to collect the refuse and trash deposited in such containers and to move this material to a city-approved location for mechanical pickup.
4. It shall be the obligation of all persons using parking areas to use such refuse receptacles or containers as provided in this section for the purposes intended.
5. It shall be unlawful for any person to dump, scatter or throw upon any parking lot any refuse, litter, garbage or trash of any kind except into receptacles provided for such purpose.

**Sec. 21-10. Containment of Refuse.**

It shall be unlawful to permit the accumulation of refuse upon any property within the city except in bags, cans or containers provided for the disposal of such refuse.

**Secs. 21-11 to 21-20 Reserved.**

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**ARTICLE II. COLLECTION AND DISPOSAL SERVICE**

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**Sec. 21-21. City's Authority.**

Pursuant to NMSA 1978, § 3-48-2, the collection and disposal of refuse in the city shall be subject to the exclusive control of the city.

Pursuant to NMSA 1978, § 3-48-3, the city may require each person owning or controlling real property to pay a reasonable fee for the collection and disposal of refuse and shall determine if the city or contractor shall collect the fee for collection and disposal of the refuse. The refuse collection fee shall only be charged against real property that is occupied or has been previously occupied. The city may require the person owning or controlling real property to pay the refuse collection fee whether or not the refuse collection is used by the person owning or controlling real property.

**Sec. 21-22. Responsibility of Owner and Occupant of Premises.**

1. The owner of any premises, as well as the occupant thereof, shall be subject to the terms of this chapter and shall be liable for violations thereof.
2. The owner of any premises, as well as the occupant thereof, shall have the right to appeal any decision by the City Manager to the City Commission.

**Sec. 21-23. Refuse Collection Generally.**

1. All refuse accumulated in the city shall be collected, conveyed and disposed of by the city or its designated contractors or agents.
2. The city, or other contractors authorized by the city, shall collect all refuse within the city. No person, except as provided in this article, shall collect or gather refuse or recyclables within the city.
3. No person shall collect, convey over any of the streets or alleys of the city or dispose of any refuse accumulated in the city except as provided in this article.
4. The City Manager or designee has the authority to make regulations concerning the days of collection, type and location of pickup, and conveyance and disposal of refuse and to change and revoke such.
5. This chapter shall not prohibit the actual producers of refuse or the owners of premises upon which refuse has accumulated from personally collecting, conveying and disposing of such refuse, provided such producers or owners comply with this chapter and with any other governing law or ordinance and provided, further, that such actual producers shall not be exempt from the payment of refuse collection fees assessed by the city.

6. This section shall not prohibit refuse collected outside the city to be transported over city streets to landfills not owned or operated by the city, provided such collectors comply with the sections of this Code regarding transportation of refuse.

## **Sec. 21-24. Classification of Fees for Solid Waste and Curbside Recycling Service.**

### **1. Residential Service**

- 1) Individual residential solid waste and curbside recycling service (four units or less).  
Individual solid waste service rates under this subsection shall be per single-family unit and residential curbside recycling service rates under this subsection shall be per single-family unit. Rates shall apply to individual homes, individual mobile homes, duplexes, triplexes, fourplex units, condominiums, small mobile home parks, and multifamily or apartment buildings which contain four or fewer single-family units. *Exception:* Any multi-family unit, with two or more units creating a hazard or nuisance, by having too many carts for the space allowed for cart placement. This will be determined by the Community Development Department and location may be required to have a commercial container in lieu of individual carts. Each single-family unit which is subject to the individual residential service rate shall be provided with one container in which to place solid waste in accordance with the other regulations provided within this chapter. Each residential family unit that requests recycling service shall be provided with one container for the collection of recyclable materials. Residents who choose not to participate in the recycling program will not be provided a recycling container but will be assessed the full monthly recycling service fee. This fee shall be based on the actual unit cost attributed to the recycling program. Any single-family residential unit requesting more than one solid waste or recycling container shall be provided with the applicable additional container and assessed the fee for the additional container. Rates are under this subsection shall be charges pursuant to the rates set forth in Chapter 16, Fee Schedule, Article IV, Sec. 16-211. Solid Waste and Recycling Rates.
- 2) Extra collections for Solid Waste or Recyclable.  
Extra collection charges requiring more collections than monthly assessment and shall be determined by city and/or contractor. Rates set forth in Chapter 16, Fee Schedule, Article IV, Sec. 16-211. Solid Waste and Recycling Rates.
- 3) Additional Bulky Waste Item Pickup.  
Additional bulky item pickup services may be available to each residence at the customer's request for an additional fee. Rates set forth in Chapter 16, Fee Schedule, Article IV, Sec. 16-211. Solid Waste and Recycling Rates.
- 4) Replacement of Lost, Stolen or Missing Polycart.  
Charges may be assessed to replace a lost, stolen or missing polycart. Rates set forth in Chapter 16, Fee Schedule, Article IV, Sec. 16-211. Solid Waste and Recycling Rates.

## 2. Commercial Service

- 1) Commercial container service rates.  
The fee schedule set forth in Chapter 16, Fee Schedule, Article IV, Sec. 16-211.Solid Waste and Recycling Rates, establishes the monthly charge for specific levels of service and applies to multiunit residential service of five units or more and to all businesses.
- 2) Multiunit residential service (five units or more).  
Multiunit residential service rates under this subsection shall be charged pursuant to the Commercial container (bin) rate schedule set forth Chapter 16, Fee Schedule, Article IV, Sec. 16-211.Solid Waste and Recycling Rates and shall apply to all multifamily, apartment or condominium buildings, which contain five or more units.
- 3) Commercial compactor units, Recycle containers, Roll-off containers.  
The use of compactors, containers, dumpsters, and roll-off containers shall be the subject of private agreements between the Contractor and users to the extent possible, if not regulated by the Aztec Municipal Code. When conflicts exist as to the type, size or frequency of collection, the City Manager will make the final determination.
- 4) Service and payment required.  
The owners or occupants of all premises in the city are required to receive refuse collection, removal and disposal service and to pay the fee for such service whether utilized by such owner or occupant or not.

## 3. Additional Provisions for Residential and Commercial Service.

- 1) Extra Service Charges.  
The City Manager shall have authority to direct the imposition of a reasonable extra service charge for special inspection work, the removal of excess amounts of refuse, landfill usage, or special handling, upon an hourly or other cost-related basis.
- 2) Lien for Nonpayment.  
The fees provided by this section are assessed against the properties within the city receiving or benefiting from such refuse collection service. If such fees are not paid within 30 days after normal city billing for such service, the amount assessed may be a lien upon the property receiving or benefiting from such service. Collection of such assessment shall be made in the manner provided by law.
- 3) Interruption of Service.  
An interruption of residential or commercial solid waste or recyclable service due to the request of a customer lasting less than 30 days will be deemed a continuation of service for the entire month and will not be the subject to credit on the customer's billing. Interruptions of service requested by the customer of greater than 30 days will be adjusted on the customer's billing on a monthly basis.
- 4) Other Utility Charges.  
The charges for residential solid waste services as provided in this section shall be nonseparable from the water and sewer charges imposed by Chapter 16, Fee

Schedule. Exception: Mobile home parks meeting requirements of section 21-25.2.(c).

5) State and Other Taxes.

The state governmental gross receipts tax and other taxes, if applicable, shall be added to the rates and charges established by this section.

**Sec. 21-25. Recycling Program.**

1. Residential Recycling Program.

The Contractor will implement a residential curb side recycling program in coordination with the City to ensure compliance with the Aztec Municipal Code. Residents who choose not to participate in the recycling program will not be provided a recycling container but will be assessed the full monthly recycling service fee.

2. Commercial Recycling Program.

Contractor will implement a commercial recycling program in coordination with the City to ensure compliance with the Aztec Municipal Code. Commercial customers participating in this program will coordinate service directly with the Contractor and will be a direct bill customer with the Contractor.

**Sec. 21-26. Preparation of Refuse and Recyclable Materials for Collection.**

1. **Containers for Individual Residential Service**

This subsection applies to all customers or users receiving individual residential service.

1) Residential Containers (Polycarts).

All owners, occupants, customers or other persons in charge of any premises within the city who receive individual residential service shall place all garbage, trash, waste, refuse or recyclable material in the applicable residential container (polycart) provided to the customer by the city. Any garbage, trash, waste, refuse or recyclables must be reasonably placed within one (1) or more solid waste polycarts, a sufficient number polycarts to contain all solid waste and recyclables, accumulated between collections so that the lid closes and the total weight of the polycart does not exceed 150 pounds or 69 kilograms. Solid waste shall be placed in tied disposable bags.

2) Contagious Disease Refuse.

The removal of wearing apparel, bedding or other refuse from homes or other places where highly infectious or contagious disease has prevailed shall be performed under the supervision and according to the rules and regulations of the state's environmental improvement division. Such refuse shall not be placed in bags, cans or containers for regular city collection.

3) Hazardous Refuse.

No hazardous refuse, such as poison, acids, caustics, chemicals, infected materials, explosives, highly flammable or combustible materials, shall be placed in any receptacle used for collection by the city or disposed of at the sanitary landfill nor

shall such be collected by the city. Hazardous refuse shall be disposed of according to regulations of the state or federal government at authorized disposal sites.

4) Boxes and Crates.

All trash such as boxes, cartons and crates shall be collapsed and secured at the collection site so as to prevent movement by the elements.

5) Vegetation.

Tree trimmings, hedge clippings and similar materials shall be cut to length, not to exceed four feet, and securely tied in bundles not more than two feet thick before being deposited for collection. Tree and shrubbery branches, limbs and trimmings cut by landscape or tree-service contractors or other commercial workers or resulting from land being cleared shall not be the responsibility of the city.

6) Recyclable Materials.

No items other than recyclable materials approved by the city or the city's contractor shall be placed in the recyclable container. Any variation of items placed in the recyclable containers that are not included in the approved recyclable materials list will be a violation of this section.

## **Sec. 21-27. Collection; Location; Time of Placement.**

### **1. Residential Service**

This section shall apply to all owners, occupants and other persons in charge of premises in the city who receive individual residential refuse collection service.

1) Time.

All residential containers (polycarts), except for those polycarts provided to a qualified physically disabled resident as defined in section 21-2, shall be placed out for pickup no later than 7:00 a.m. on the regularly scheduled collection day, but no earlier than 7:00 p.m. on the evening prior to the regularly scheduled collection day, unless otherwise authorized by the city code enforcement officer. Residential collection shall be between the hours of 7:00 a.m. to 8:00 p.m. Monday through Friday.

2) Placement for Collection.

Residential containers (polycarts) shall be placed at ground level as close to the back of the front curb as possible, or within 15 feet of the edge of the roadway, where no curb is present, without causing interference with pedestrians, emergency vehicles, vehicular traffic, or fire hydrants. All containers shall be clearly visible and accessible to collection employees. All containers must be at least 4 feet from any object such as: cars, trees, mailboxes or other carts free from any obstructions, including but not limited to trees, shrubbery, walls, fences, and vehicles. If the code enforcement officer finds that service from a right-of-way is hazardous or otherwise not feasible because of the weather or condition of the right-of-way and the customer has frontage on a second right-of-way, the code enforcement officer may notify the customer that service will be from the second right-of-way, and the customer shall place containers for collection within 15 feet from the second right-of-way after being so notified. If the Community Development Department finds that a multi-unit complex (two or more units) becomes too congested with the number of residential containers or present a hazard, the Community Development Department is

authorized to require a commercial container be placed on property and shall be sized to sufficiently accommodate the number of units refuse disposal.

3) Removal.

All emptied containers shall be removed from the curb area within 12 hours after collection.

4) Storage of Containers between Collections.

All residential containers shall at all times, other than when placed for collection be kept at a minimum of 10 feet away from the pickup location within the premises of the owner, occupant, or other person in charge of the premises in such a manner so as to preclude the scattering of garbage, trash or refuse. If spilling or scattering does occur, it shall be the responsibility of the owner or occupant to remove and properly dispose of such spillage.

5) Special Service.

Shall be provided to any qualified physically disabled resident, as defined in section 21-2. The contractor shall take the cart from the front of the residence to the truck and return the cart to its original location. The contractor will display the handicapped symbol or use an alternative method determined by Contractor and approved by the City for residences that qualify for such service. The utility office and/or contractor shall require documentation from customer requesting this service, documentation must include a signifying statement from a physician that the applicant is permanently, physically disabled to the extent that they cannot transport their trash to the curb for collection and the applicant must signify that there is no one residing in the residence over 12 years of age, who is able to transport the container from the residence to the designated curbside location.

**2. Commercial Service**

This section shall apply to all owners, occupants and other persons in charge of premises in the city who receive commercial refuse collection service.

- 1) Commercial collection shall be between the hours of 4:00 a.m. and 8:00 p.m. Monday through Friday and 4:00 a.m. to 1:00 p.m. on Saturday. The contractor shall provide collection of solid waste from commercial units a minimum of once per week. The frequency of collection, the type of container shall be based on health, safety and convenience.
- 2) The Community Development Department and the Contractor shall determine the placement of commercial containers. The specific location of a container will be determined in the planning and/or building permit process and shall meet the requirements of the Aztec Municipal Code. The Contractor shall have input as to the location of containers on new commercial sites. The Contractor shall provide collection service for the collection of solid waste from commercial units a minimum of once per week.

**3. Mixed Collection Service**

Mixed Collection (mixed collection is the collection of residential commercial in one area) shall be between 7:00 – 8:00 p.m. Monday through Friday, and 7:00 a.m. to 3:00 p.m. on Saturday.

**4. Exceptions to Normal Collection Time**

Collection beyond the hours established for residential or commercial customers shall be permitted only in the event of extra heavy workload, excessive equipment breakdown, or unusually heavy inclement weather. The City Manager shall approve any deviations for the established work hours.

**Sec. 21-28. Dead Animals.**

1. City residents will be allowed to dispose of dead animals at the landfill, operated by the Contractor, for an established fee.
2. No person shall deposit or otherwise place for collection by the city or its contractor any carcass or portion of any animal, bird or reptile.

**Sec. 21-29. Construction Sites and Transportation of Materials.**

1. Construction site or Demolition sites producing debris roll-off containers or bins shall arrange with the city solid waste contractor for its collection and removal by obtaining container(s) from city contractor. See definition of "Contractor" in section 21-2 of this article. A person may personally collect such debris and transport it to a state permitted landfill. Transportation shall be in a vehicle which will prevent the debris from spilling, blowing, or falling onto the street, roadway, or other property.
2. Every person who has secured a building permit from the city shall, prior to the start of any construction activity, place on those premises a container or fenced area of suitable size and design to contain all refuse that might be disturbed or removed from the premises by the wind or elements.
3. If such container or fenced area is filled, the person securing the building permit shall cause the container or fenced area to be emptied and its contents removed to an appropriate sanitary landfill.
4. No person shall allow refuse, rubbish or other waste to blow or be carried from the premises for which the building permit was secured.
5. The city shall not be responsible for the collecting or hauling of building material originating from the private property preliminary to, during or subsequent to the construction of new buildings, alterations or additions to existing buildings of whatever type or from demolition of existing structures. Such materials shall be removed by the owner of the property or by the contractor. No new certificate of occupancy shall be issued until such material has been removed by the owner or contractor. Such material shall be removed and disposed of in the designated landfill as provided in city ordinances.
6. A person engaged in demolition who has obtained a permit from the city must remove the debris and structural parts and contain their elements from scattering in the same manner as set out in sections of this Code pertaining to a construction site. The conveyance or transportation of such materials from the site shall be in accordance with city ordinances.

7. A person mixing concrete or transporting concrete on city streets shall not drop or leave waste concrete upon the city streets or upon any property within the city unless permission of the property owner is first obtained. No person shall transport concrete upon the public streets except in a proper truck or vehicle which prevents the spillage or leakage of concrete upon the public streets.

#### **Sec. 21-30. Transportation of Refuse.**

1. Any vehicle used to transport refuse; trash, trees or shrubbery trimmings must have suitable covers or be secured in such a way to prevent the loss of contents on property or roadways.
2. It shall be unlawful for any person to drive or move any vehicle upon any public way unless such vehicle is so constructed or loaded as to prevent its contents from dropping, shifting, leaking or otherwise escaping there from.

#### **Sec. 21-31. Airtight Appliances, Refrigerators or Containers.**

It shall be unlawful for any person to leave outside any building in a place accessible to children any appliance having an airtight snap lock or similar device without first removing the lock or door from the appliance, refrigerator or container. This section shall not apply to any appliance, refrigerator or container which has been placed adjacent to the building and is crated, strapped or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment thereof. Any such appliance shall be kept from public view.

#### **Sec. 21-32. Scavenging.**

1. Scavenging.  
It is unlawful to scavenge, collect or scatter refuse at any city landfill or to scavenge, collect, or scatter refuse from any bag, container, bin or can placed or provided for collection of refuse pursuant to this chapter. City agents or employees and the contractor employed by the city for solid waste and recyclable collection service shall, in the performance of their duties, be exempt from this subsection.
2. Dissemination.  
It shall also be unlawful for any person to give, sell, show, deliver or otherwise disseminate to any other person any item removed or taken from any bag, container, bin or can placed or provided for collection of refuse pursuant to this chapter. It shall also be unlawful for any person to examine, copy, reproduce or extract information from any item placed within any such receptacle regardless of whether such item is removed or not.
3. Exceptions.  
Nothing in this section shall prohibit a person from removing refuse from a receptacle owned by or provided to that same person. This section shall not apply to any federal, state, county or city law enforcement officer acting within the scope of such officer's duties while conducting a criminal investigation.

# Staff Summary Report

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<b>MEETING DATE:</b>	September 10, 2019
<b>AGENDA ITEM:</b>	XIV. BUSINESS AGENDA (B)
<b>AGENDA TITLE:</b>	RFP 2019-697 City Attorney Contract Award

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<b>ACTION REQUESTED BY:</b>	Finance Dept
<b>ACTION REQUESTED:</b>	Approval to award contract
<b>SUMMARY BY:</b>	Kathy Lamb

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## **PROJECT DESCRIPTION / FACTS**

- A Request for Proposal (RFP) was issued in May 2019 for Municipal Legal Services. The RFP was issued as a result of the Risley Law Firm notice to terminate the agreement to provide municipal legal services effective May 2019. A temporary contract assignment to the Unsicker Law Firm was negotiated to continue legal representation until a new award was completed. The selected attorney(s) would be under an annual agreement for a maximum of four years.

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

- Issued a formal Request for Proposal – RFP 2019-697 Municipal Legal Services in May 2019. Proposals were due on June 20, 2019.
- Three proposals were received and evaluated. Proposals were received from Adam H. Bell P.C., H. Steven Murphy, P.C & Tyson K. Gobble, P.C. and the Unsicker Law Firm. The evaluation committee included the City Manager, Captain of the Police Department, Electric Department Director, City Clerk/Personnel Administrator and General Services Director. Proposal evaluations were completed by July 23, 2019.
- The committee elected to conduct oral interviews with each of the proposers. The interviews were completed the week of August 19, 2019. The attached Proposal Evaluation summary includes both the results of the proposal and interview scoring.
- The evaluation committee determined H. Steven Murphy P.C. and Tyson Gobble, P.C. (Murphy & Gobble) have the resources and broad experience to best serve the City. Mr. Murphy will represent the City primarily in prosecutions and Mr. Gobble will represent the City in all other City legal requirements.
- It is anticipated there may be some conflicts on the prosecution side (Mr. Murphy may be representing defendants in appeal cases against the City in higher courts). In the event of these conflicts, Murphy & Gobble will make arrangements for outside counsel to represent the City in these specific cases (costs will be absorbed in the monthly retainer fee). Murphy & Gobble monthly retainer is the same amount negotiated with the Risley Law Firm in August 2018.

- If the RFP is awarded to Murphy & Gobble, meetings will be scheduled to allow Mrs. Unsicker to provide documents and status of any pending issues and with City representatives to determine the process for effective communication and scheduling.
- If approved, the new contract will become effective October 1, 2019, for a term of one (1) year and will be subject to renewal for three (3) additional one-year terms. Under the terms of Section 13-1-50, NMSA contracts may be subject to extension not to exceed four (4) years.
- On August 21, 2019, all proposers were advised of the committee recommendation to the Commission and advised of their right to submit written protest within 15 days.
- Questions regarding this procurement, other than legal procedure, should not be addressed to the City Attorney due to her participation as a respondent in the procurement process.

<b>FISCAL INPUT / FINANCE DEPARTMENT (if applicable)</b>
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- **\$78,198** yearly including tax (base contract for 9 months remaining in FY20). The FY20 Annual Budget is currently established at \$90,000 (General Fund) which is sufficient to meet the annual requirements for legal services monthly retainer.
- The FY20 budget may require a mid-year (January 2020) budget adjustment dependent on hours exceeding the monthly retainer.

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**SUPPORT DOCUMENTS:** RFP 2019-97 Proposal Evaluation Summary  
2019 Professional Services Contract (Draft)

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to approve award of RFP 2019-697 Municipal Legal Services to H. Steven Murphy P.C. and Tyson Gobble, P.C. and authorize the City Manager to sign the professional services agreement on behalf of the City.

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**City of Aztec  
RFP 2019-697  
Municipal Legal Services  
Scored Evaluation Tabulation**

Evaluation Criteria>

**Organizational Experience  
Max Points: 450**

**Organizational References  
Max Points: 150**

**Qualifications  
Max Points: 250**

Evaluator # >

	1	2	3	4	5
Adam Bell PC	380	340	400	450	400
Steven H. Murphy PC & Tyson K. Gobble PC	425	340	400	450	350
Unsicker Law Firm	400	340	350	450	350

	1	2	3	4	5
Adam Bell PC	75	100	100	100	100
Steven H. Murphy PC & Tyson K. Gobble PC	150	150	150	150	100
Unsicker Law Firm	150	150	150	150	150

	1	2	3	4	5
Adam Bell PC	200	190	250	250	200
Steven H. Murphy PC & Tyson K. Gobble PC	225	175	200	250	200
Unsicker Law Firm	200	190	200	250	200

Evaluation Criteria>

**Affiliations  
Max Points: 50**

**Proposal Responsiveness  
Max Points: 50**

**Cost Proposal  
Max Points: 50**

Evaluator # >

	1	2	3	4	5
Adam Bell PC	40	35	50	50	50
Gobble PC	40	45	40	10	50
Unsicker Law Firm	50	40	50	50	50

	1	2	3	4	5
Adam Bell PC	30	40	50	10	50
Gobble PC	50	50	50	50	40
Unsicker Law Firm	35	50	45	50	40

	1	2	3	4	5
Adam Bell PC	50	50	50	50	50
Gobble PC	38	38	38	38	38
Unsicker Law Firm	44	44	44	44	44

Evaluation Criteria>

**NM Preference:  
Max Points 50  
(Adam Bell 5% preference; Murphy/Gobble  
7% veteran preference)**

**Score Totals From Each Evaluator  
Maximum Total Points = 1,050**

**Proposal Evaluation  
Score Average**

Evaluator # >

	1	2	3	4	5
Adam Bell PC	38.75	37.75	45	45.5	42.5
Steven H. Murphy PC & Tyson K. Gobble PC	64.96	55.86	61.46	66.36	54.46
Unsicker Law Firm	0	0	0	0	0

	1	2	3	4	5
Adam Bell PC	813.75	792.75	945	955.5	892.5
Steven H. Murphy PC & Tyson K. Gobble PC	992.96	853.86	939.46	1014.36	832.46
Unsicker Law Firm	879	814	839	994	834

Rank	
879.9	2
926.62	1
872	3

Evaluation Criteria>

**Interview Process  
Max Points = 5**

**Interview  
Score Average**

**Proposal Evaluation and Interview  
Score Average**

Evaluator # >

	1	2	3	4	5
Adam Bell PC	4	4	3	3	4.5
Steven H. Murphy PC & Tyson K. Gobble PC	5	5	5	4	5
Unsicker Law Firm	3	4	4	2	4

Rank	
3.7	2
4.8	1
3.4	3

Rank	
883.6	2
931.42	1
875.4	3

**CITY OF AZTEC**  
**PROFESSIONAL SERVICES CONTRACT**  
**RFP 2019-697 MUNICIPAL LEGAL SERVICES**

THIS AGREEMENT is made and entered into by and between the **CITY OF AZTEC**, hereinafter referred to as the "City," and **H. Steven Murphy, P.C. and Tyson K. Gobble, P.C.** , hereinafter referred to as the "Contractor," and is effective as of **October 1, 2019**, "Effective Date".

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

Contractor agrees to perform the services as set forth in Scope of Services RFP 2019-697 MUNICIPAL LEGAL SERVICES, Exhibit 1, attached hereto, "Services", in a timely manner and in accordance with the terms and conditions of this Agreement and applicable laws. Contractor shall furnish, at its own expense, all labor, transportation, materials, consumables, qualified supervisory personnel, tools, equipment and facilities, to properly perform the Services, except as otherwise provided in the Services.

**2. Compensation.**

A. For performance and completion of the Services, the City shall pay the Contractor based on Compensation Schedule, Exhibit 2, attached hereto, "Compensation", excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the City to the Contractor. **The monthly retainer fee payable to the Contractor under this agreement, shall not exceed \$7,000.00 per month. Hours in excess of 40 hours per month will be compensated at \$275.00 per hour for H. Steven Murphy P.C. and \$250.00 per hour for Tyson K. Gobble P.C. for the period through September 30, 2020.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the City. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year (June 30) in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the City finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on \_\_\_\_\_ unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a

professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

**4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of city funds or due to the Appropriations paragraph herein. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City of Aztec for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of city vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the

City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

**8. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the City; (ii) the Contractor is not a member of the family of a public officer or employee of the City; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the City, a member of the family of a public officer or employee of the City,

or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the City within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the City whose official act, while in City employment, directly resulted in the City's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the City.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

### **13. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

### **14. Merger.**

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

### **15. Penalties for violation of law.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees 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 of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. 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 San Juan County, New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Insurance**

Prior to commencement of the Services, Contractor shall obtain the insurance required by this Agreement and all insurance that may be required under the applicable laws, ordinances and regulations of any governmental authority. Each insurance policy of the Contractor shall provide, either in its printed text or by endorsement, that it shall be primary with respect to the interest of the City, and any insurance maintained by the City is in excess and not contributory to Contractor's insurance policies regardless of any like insurance coverage that the City may have. Contractor shall furnish to City a completed certificate of insurance coverage which references City's project number and project title for the Services and which specifically requires thirty (30) days prior notice to City of cancellation, termination or any material change of any such insurance policy. Review of the Contractor's insurance by City shall not relieve or increase the liability of Contractor. Where applicable, all insurance policies shall provide for waiver of subrogation in favor of the City, include cross liability provisions, and all policies, except Workers' Compensation and professional liability (a/k/a errors and omissions insurance), shall name the City as additional insured.

Without limiting any of the liabilities or other obligations of Contractor under this Agreement, Contractor shall obtain and maintain in effect, at its sole cost and expense, with forms and insurers acceptable to City, until all the obligations under this Agreement are satisfied, insurance policies providing coverage protecting against claims for personal and bodily injury or death, as well as claims for property damage which may arise from operations in connection with the Services whether such operations are by Contractor or any subcontractor for at least the following minimum coverage:

(a) Legal Malpractice Insurance, or the equivalent, with limit of not less than One Million Dollars (\$1,000,000).

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

**20. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the City from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City by certified mail.

**21. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**22. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**23. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:                   CITY OF AZTEC  
  Attn: Purchasing Office  
  201 W Chaco  
  Aztec NM 87410

To the Contractor:         H. Steven Murphy, P.C. & Tyson K. Gobble, P.C.  
  4000 E. 30<sup>th</sup> Street  
  Farmington NM 87402

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and

that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the Contractor and City have executed this Agreement on their behalves by their duly authorized representatives as of the Effective Date set forth above.**

By: \_\_\_\_\_  
Steve Mueller, City Manager

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

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Karla Sayler, City Clerk

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

By: \_\_\_\_\_  
H. Steven Murphy, P.C.

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

\_\_\_\_\_  
Title

Phone: \_\_\_\_\_

\_\_\_\_\_  
Tyson K. Gobble, P.C.

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

\_\_\_\_\_  
Title

Phone: \_\_\_\_\_

\_\_\_\_\_  
Federal Taxpayer Identification or  
Social Security Number

\_\_\_\_\_  
NM Taxpayer Identification  
Number