

A G E N D A
CITY OF AZTEC
CITY COMMISSION WORKSHOP
October 8, 2019
201 W. Chaco, City Hall
5:15 p.m.

5:15 P.M.

Discussion of Operations of Aztec Municipal golf Course presented by Hidden Valley of Aztec, Inc. Board of Directors

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

MEETING DATE: October 8, 2019
AGENDA ITEM: Workshop – Presentation And Discussion Only
AGENDA TITLE: Presentation by Hidden Valley of Aztec Inc., Non-Profit 501 (C) 4 Organization

ACTION REQUESTED BY: No Action To Be Taken – Presentation And Discussion Only

ACTION REQUESTED:

SUMMARY BY: Steve Mueller

PROJECT DESCRIPTION / FACTS

Hidden Valley of Aztec Inc., is a recently formed Non-Profit 501 (C) 4 Organization. The organization has requested to meet with the Aztec City Commission to provide some information on their organization and discuss the operations of Aztec Municipal Golf Course.

SUPPORT DOCUMENTS: Information packet provided by Hidden Valley of Aztec Inc.

DEPARTMENT'S RECOMMENDED MOTION:



Aztec Municipal Golf Course and Event Center



TABLE OF CONTENTS

- **LETTER OF INTRODUCTION/PRESENTATION**
- **LETTERS OF SUPPORT**
- **BUDGET**
- **FEE STRUCTURE**
- **ARTICLES OF INTREST**



Aztec Municipal Golf Course and Event Center



October 1, 2019 ·

Hidden Valley of Aztec Inc., Non Profit 501(C)(4) Organization

President- Jimmie Bowman

Vice President- Richard Collins

Treasurer- Terry Earley

Secretary- Haleigh Torrez

Tournament Director- Devin Bowman

Board Members- Steven Markley

Jef Newland

Matthew Rutter

Bob Ward

Randy Hodge

It is our intent to continue a partnership/co-op agreement with the City of Aztec, and together, enter into a working relationship that will benefit both parties, but more importantly, our community.

The facility was opened in 1956, and with the exception of 3 months in 2015, and a year and a half of renovations in 1999 - 2000, has been in continuous operation until the present time. It was sold in 1999 to a group of investors who converted the facility into the existing layout.

It is important to realize the value of an Icon that has been part of our community for more than 53 years and has provided decades of entertainment and social networking to the entire Four Corners Region. There are only a handful of businesses that have contributed to the Aztec community for five decades and it is hard to place a value on a facility that has served the entire region for 53 years. This facility provides regulation golf, par three golf, disc golf, foot golf, and paved walking and jogging trails. WE offer a huge health and wellness benefit, and dramatically influences the quality of life in our community. The value is simple to those that use and support it, it's priceless. To those that don't, however it may seem useless, but we believe the supports far outweigh the others.

We are partnering with Vista Nueva High School and will be starting a mentorship program to help aid our local youth in learning life and job skills. This program will entail all aspects of the business and provide a structured program to help prepare these students for real life opportunities after graduation.

with the importance this facility offers to the community. We have increased our special functions to more than 30 events this year including weddings, class reunions, retirement parties, baby showers and more. The letter from Presidential Inn & Suites shows how the facility impacts business's in the community. We cater a large part of these special functions from Rubio's generating more than \$30,000.00 in sales this year. We have no way of evaluating the impact on other businesses, but I can say based on the trash accumulated on a daily basis our patrons are spending money at our convenience stores and restaurants.

This is why this facility should remain a part of the community and continue its positive impact in our city as it has for the past 53 years.

It is our intent to partner with the City of Aztec and continue to operate the facility as a non profit organization.

Our requests:

- The City negotiate and maintain the lease of the property
- The City maintain the liquor license
- The City to support and provide the continued use of the water rights
- The City to continue marketing support on the City website and marketing material
- The City to provide aid, co/op for catastrophic losses and planned capital projects as agreed upon by both parties

In return, we offer the City a new health and wellness opportunity for all full time employees, to include green fees and use of the banquet facility with all amenities being the responsibility of the employee (ie: cart rental, food, beverage, etc.).

We hope the Council will see the value in this partnership and continue their valued commitment to establishing a long term solution for a valued asset to our community.



To whom it may concern,

Throughout the history of Presidential Inn and Suites the golf course has had many events that brought people and revenue to the hotel and help stimulate the local economy. This year, the golf course has brought in hundreds of guests and tens of thousands of dollars in revenue to the lodging industry in the city of Aztec. Some examples of business that the golf course has provided are as follows.

Robby Ward Memorial Golf Tournament: 10 rooms 2 nights

Guzman Energy tournament: 5 rooms 1 night

Aztec High School 50 year reunion: 25 rooms 1-2 nights

Weddings: between June and September we had approximately 130 rooms booked for weddings that occurred at the golf course, these guests stayed anywhere between 1 and 3 nights.

Frisbee Golf Tournament: 12 rooms 1-2 nights

These are just some of the examples of business the golf course has provided to the presidential inn and suites. There have also been several business contracts that I have been able to book solely based on interacting with individuals at golf tournaments or having lunch or dinner at the golf course. I believe that the golf course is a valuable asset in terms of booking rooms at the hotel. The golf course also provides added activities for my guests and allows me to offer golf packages and tour group deals including golf. Not to mention that as far as I am aware the Aztec golf course is the only course in the area that has a liquor license and has liquor available for its patrons. With the correct marketing of that aspect I believe the golf course could become highly profitable. I know that many people who have golfed at Pinon Hills or Kirtland who visited the hotel had mentioned to me that they would've liked to have that service provided at those courses. When I informed them that the Aztec course provided that amenity, they chose to golf there instead of playing another round at Pinon Hills. In my eyes, the golf course is an asset to the city. This year the course was by far the best quality course in the area, as pinon hills and Kirtland seemed to suffer from drought and poor greenskeeping. The reputation of the course will only grow as time goes on, and I know many people are now beginning to recognize Aztec as a well

taken care of course and an asset to our community. Thank you, and I hope to see the golf course continue to remain open and available to my guests as well as the residents of San Juan County.

Joshua Large

General Manager

Presidential Inn and Suites.



AZTEC MUNICIPAL SCHOOL DISTRICT

"Building a Foundation of Success"

Office of the Superintendent

1118 W. Aztec Blvd. Aztec New Mexico 87410

(505) 334-9474 FAX (505) 334-9861

October 2, 2019

Dear City Commissioners:

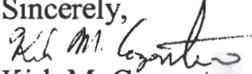
First of all thank you for your service to our great community. I am writing this letter of support for the golf course and hope you will do all you can to keep it under your operation.

I know when it comes to looking at budgets it is a very difficult issue, and that hope is not a strategy when it comes to making ends meet. I also know that a community without a golf course that serves as a great meeting place and community outlet will also have a lot of impact on a budget as well.

As the school district, we obviously have a vested interest because our students utilize the facility for our boys and girls golf teams. We are, and have been very appreciate for this opportunity for our young people to be able to do so over the many years that we have teams. It goes without saying how this game does teaches our student athletes the many life skills that cannot be taught in the classroom. This is another reason that I ask that you find a way to preserve the course for the citizens of this community. Without a place for our student athletes to practice and play, we are not sure what will happen with the future of this program. I am not laying this on your shoulders, but do want to be fully transparent.

When it comes to making money at a golf course, we know that is very difficult in a town our size, and any town for that matter, but one cannot measure what it does when it comes to adding a service to the overall community. Dollars and cents cannot be the only measure when making this decision so I hope you will find a way to keep this recreational facility intact for the citizens of Aztec and San Juan County.

I do not envy the decisions that you have to make, but understand the difficulty you face, as we have had to make similar ones over the past several year. I also know that the impact to the community will be long lasting and impactful.

Sincerely,

Kirk M. Carpenter

Our Mission:

In a safe, caring environment, we will partner with our community to improve learning for all students.

From: MP Schildmeyer
Sent: Wednesday, October 2, 2019 11:28 AM
To: rkaztec@outlook.com
Subject: Aztec Municipal Golf Course

To whom it may concern:

On June 13, 2019, the Democratic Party of San Juan County held a successful fundraiser at the Aztec Municipal Golf Course. In deciding to hold our event at Aztec Municipal, our committee toured this beautiful golf course, and were taken by its accessibility and suitability for our event, which was basically a dinner and dance program.

We met with Randy Hodge on several occasions, and he and his staff were courteous and helpful, as well as offering us an attractive price in support of our goal of raising funds for our organization. The fact that the Golf Course offers a full service bar was an important consideration in our decision to hold our activity at Aztec Municipal.

All of our needs were met, and, as they say, a good time was had by all. The Democratic Party of San Juan County would highly recommend the Aztec Municipal Golf Course as a venue for any group seeking an attractive and well-managed facility in which to hold their next social event. Thank you for the opportunity to help promote this valuable asset of the City of Aztec.

Sincerely,

MP Schildmeyer
Chair, DPSJC
505-419-1268

LETTERS TO THE EDITOR

Support golf in Aztec

I have been the Aztec High School golf coach since 2016 and we have had some very good seasons with coming in third at state in 2017 & 2019. This year, we had more students playing so we ran short of funding to do our usual celebrations at the end of the year. This money had to come out of our golf booster club budget.

Aztec Municipal Golf Course is undergoing a changeover from the City of Aztec support to becoming a non-profit. Our golf course is crucial to the operation of our team. I am asking for donors to contribute a one-time donation to the Aztec High School Golf Booster Club and the Aztec Municipal Golf Course - 50/50 so we do not fall short of funding this coming 2019-2020 school year.

The students enjoyed the competitions and I enjoyed having more of them play but it also contributed to budget shortage at the end of the year. I am trying to secure the needs of the team and the golf course as we move forward.

Silver, Bronze, and Gold plaques will be placed at Aztec High School with the names of all donors who contribute \$1,000, \$2,000, or \$5,000 respectively. It is important to keep this golf course going so our community offers a quality of life that can't be matched anywhere else. All other donors will be recognized in our school newsletter that goes out at the beginning of the year weekly. I will be happy to do a tax donation letter on AHS letterhead for anyone who donates.

We need to play golf as much as possible right now to keep the golf course open. We need to have this community support whether it be having an event at the golf course through Ruby's in the Valley or just increasing the amount of time we play golf.

Help to keep our Aztec High School Golf Team and golf course funded. If you would like to volunteer with the golf team, please let me know. If additional information is needed, please contact me at 970-903-9285 or ahbarrir@aztec.k12.nm.us.

Irene Barry

AHS Golf Head Coach

Secretary - Aztec Municipal Golf Course

Save Aztec Municipal Golf Course for our community

Your Turn Irene Barry | Guest columnist

It came to my knowledge that the Aztec Municipal Golf Course may lose the support of the City of Aztec.

My student-athletes practice at this golf course, and we represent Aztec High School and our community through our competitions.

We qualified for state the past four years, and Aztec Municipal Golf Course will help us continue that success.

The golf course is also used by our locals, according to golfer Randy Hodge, who also noted that 11,000 rounds of golf were played in 2018.

There are more than 100 annual members who use the course.

For a small rural facility, that is a lot of playing time.

If Aztec Municipal Golf Course closes, it'll end our program at AHS and take the opportunity away from 25 young adults who want to participate in a local golf team.

The past few years have been very challenging due to high drought and unusual rains, which have increased the course's maintenance fees.

This will force our locals to go to other facilities and pay more money for a round of golf as a result.

Golf is a sport where someone can learn as much about themselves as they want because it's filled with so many challenges one has to overcome.

Golf has also influenced society in a positive way.

Golf is a demanding sport, as it takes a lot of time, hard work and dedication to become decent at it.

Golf has lasted for many, many years.

There have been players during the reign of Julius Caesar all the way up to today's players like Phil Mickelson, Rory McIlroy and Tiger Woods.

Golf is played around the globe, and its origins

trace back to the Song Dynasty in China from the years 960 to 1,279.

The governing body of golf began as the United States Golf Association (USGA) in 1894.

The Professional Golf Association of America was then founded in 1916.

The name of the professional tour later changed to the Player's Association Tour in 1981, which was then renamed as the Professional Golfers Association (PGA).

Tournament golf has been gaining popularity ever since.

Today, golf in the U.S. is a \$70 billion-a year industry with over 24.1 million players.

Golf takes time, effort, attitude and lots of exercise on and off the course.

Golf is a lifetime sport for the young, the old and those who want to compete, and for those who want to just have fun playing the game.

I will publish a series of articles about the value of a local golf course to a community in the next few weeks, in hopes that we convince the City of Aztec that the Aztec Municipal Golf course represents a part of Aztec that we, as a community, are not willing to lose.

We need to join together as a community to support the golf course and to show the City of Aztec that we do not want to lose it.

I ask you, as community members, to make the City of Aztec realize that this is unacceptable.

I ask and challenge each and every community member to write to the City of Aztec, attend Randy Hodge's community meetings at the golf course and to figure out another solution to the problem to help save our golf course.

AG E N D A
CITY OF AZTEC
CITY COMMISSION MEETING
October 8, 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 Minutes September 24, 2019
- B. Special Commission Meeting Minutes October 1, 2019
- C. Contract for Library Services
- D. Senior Citizen Services Agreement
- E. Red Apple Transit Agreement
- F. Resolution 2019-1156 Authorizing Closing of Time Certificates of Deposit or City of Aztec
- G. Resolution 2019-1157 Authorizing Opening and Closing of Time Certificate of Deposit for City of Aztec
- H. Resolution 2019-1158 Municipal Surplus

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. PRESENTATIONS

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VIII. CITIZENS INPUT (3 Minutes Maximum)

IX. BUSINESS ITEMS

- A. Intent to Adopt Ordinance 2019-495 An Ordinance Granting a Franchise to Comcast Cablevision of New Mexico/Pennsylvania, Inc. to Operate and Maintain a Cable System in the City of Aztec, New Mexico
- B. Four Corners Economic Development FY20 Funding Request

X. QUASI JUDICIAL HEARINGS (LAND USE)

None

XI. COMMISSIONER, CITY MANAGER, DEPARTMENT REPORTS

XII. ADJOURNMENT

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1
2 CITY OF AZTEC
3 COMMISSION MEETING MINUTES
4 September 24, 2019
5

6 **I. CALL TO ORDER**
7

8 Mayor Victor Snover called the Meeting to order at 6:02 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 Judge Gray)
14 B. United States Pledge of Allegiance (led by Mayor Snover)
15 C. New Mexico pledge of Allegiance (led by Mayor Snover)
16

17 **III. ROLL CALL**

18 Members Present: Mayor Victor Snover; Mayor Pro-Tem Fry;
19 Commissioner Sipe; Commissioner Austin Randall;
20 Commissioner Mark Lewis
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. APPROVAL OF AGENDA ITEMS**
29

30 MOVED by Commissioner Randall to approve the agenda as given; SECONDED
31 by Commissioner Lewis
32

33 All voted Aye: Motion passed five to zero
34

35 **V. CONSENT AGENDA**
36

- 37 A. Commission Meeting Workshop Minutes September 10, 2019
38 B. Commission Meeting Minutes September 10, 2019
39 C. Resolution 2019-1155 Municipal Surplus
40 D. Aztec Boys & Girls Club Lower Rood Retrofit
41

42 MOVED by Commissioner Lewis to Approve the Consent Agenda as given
43 SECONDED by Commissioner Randall
44

45 All voted Aye: Motion passed five to zero
46

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

48
49 NONE

50
51 **VII. PRESENTATIONS**

52 San Juan Regional Medical Center

53
54
55 The CEO of San Juan Regional Medical Center mentioned that he wanted to
56 present Commission with current information about the hospital. They have worked
57 through financial challenges and are solid and here to stay. He gave the history of how
58 the hospital started. It is a level 3 trauma center with 194 bed licensed hospital. The
59 hospital has won the award for one of the top 20 most beautiful hospitals. He mentioned
60 that they have a wide range of specialists. The EMS services were awarded a Mission
61 Life by the American Heart Association. He mentioned that some of the current events
62 are the billing system is back up, operating at a positive operating margin. Commission
63 had positive feedback for the Hospital.

64
65 **VIII. CITIZENS INPUT (3 Minutes Maximum)**

66
67 NONE

68
69 **IX. BUSINESS ITEMS**

70
71 NONE

72
73 **X. QUASI JUDICIAL HEARINGS (Land Use)**

74
75 NONE

76
77 **XI. COMMISSIONER, CITY MANAGER, DEPARTMENT REPORTS**

78
79 City Manager Steve Mueller mentioned that we had a successful hazardous waste
80 event with the County on the 21st, we had a total of 85 vehicles with 28 of those from
81 Aztec. ECHO Food drive coming up, this is the 10th year. He mentioned that NMDOT
82 has started striping around the area.

83
84 Commissioner Randall apologized for missing the last meeting. He also mentioned
85 that he is in favor of the chickens in the City limits unless it becomes a nuisance and he
86 is for dogs to ride in the back of the truck.

87
88 Commissioner Sipe mentioned that NWNM Seniors is still looking for an executive
89 director. She will be attending a MPO meeting on Thursday.

90

91 Commissioner Lewis mentioned that the San Juan Water Commission was
92 canceled. He attended the Climate Strike on Friday and mentioned there were a lot of
93 people from around the world. He also attended a meeting at the Aztec Public Library.
94

95 Mayor Pro-Tem Fry mentioned she attended EDAB. She attended SJC Partnership
96 there were excellent presentations. She attended the Steamers and Dreamers event,
97 she was disappointed with the low turnout.
98

99 Mayor Snover mentioned he was out of town last week for a JROTC training. He
100 thanked everyone for coming out tonight. He mentioned that he will be attending a
101 conference in Silver City next week on outdoor recreation.
102

103 General Services Director Jeff Blackburn mentioned that they are working on
104 coordinating a cleanup day on October 12th.
105

106 Community Development Director Steven Saavedra reminded Commission that on
107 October 9th at 9 am there is a special EDAB meeting with Partners of Manufactures.
108

109 Community Center Director Cindy Iacovetto thanked Commission for all the
110 support she received for her Steamers and Dreamers event.
111

112 **XII. ADJOURNMENT**

113
114 Mayor Snover moved to adjourn the meeting at 6:35 pm SECONDED by
115 Commissioner Sipe
116
117
118
119
120
121

122 Mayor, Victor Snover
123

124 ATTEST:

125
126 _____
127 Karla Saylor, City Clerk
128

129 MINUTES PREPARED BY:

130
131 _____
132 Sherlynn Morgan, Administrative Assistant
133

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

6 **I. CALL TO ORDER**
7

8 Mayor Victor Snover called the Meeting to order at 5:35 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 Randal)
14 B. United States Pledge of Allegiance (led by Mayor Snover)
15 C. New Mexico pledge of Allegiance (led by Mayor Snover)
16

17 **III. ROLL CALL**

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. APPROVAL OF AGENDA ITEMS**
29

30 MOVED by Commissioner Sipe to approve the agenda SECONDED by
31 Commissioner Lewis
32

33 All voted Aye: Motion passed five to zero
34

35 **V. CLOSED SESSION**
36

37 Mayor Snover moved the meeting into Closed Session at 6:07 pm Pursuant to
38 State Law, NMSA Section 10-15-1 (H-6) discussion of the contents of competitive
39 sealed proposals solicited pursuant to the Procurement Code, during the contract
40 negotiation process for RFP #2019-697, Municipal Legal Services
41

42 Mayor Snover voted Aye; Mayor Pro-tem Fry voted Aye; Commission Sipe voted
43 Aye; Commissioner Randall voted Aye; Commission Lewis voted Aye
44

45 Mayor Snover moved the meeting out of Closed Session at 7:15 pm Pursuant to
46 State Law, NMSA Section 10-15-1 (H-6) discussion of the contents of competitive
47 sealed proposals solicited pursuant to the Procurement Code, during the contract
48 negotiation process for RFP #2019-697, Municipal Legal Services and mentioned
49 that there were no other items discussed and no decisions made
50

51 Mayor Snover voted Aye; Mayor Pro-tem Fry voted Aye; Commission Sipe voted
52 Aye; Commissioner Randall voted Aye; Commission Lewis voted Aye

53

54 **VI. BUSINESS ITEMS**

55

56 A. Action regarding award of RFP 2019-697 Municipal Legal Services

57

58 Mayor Snover mentioned that after meeting with our outside Council Mr.
59 Zamora in closed session commission had discussed some of the issues they
60 were concerned about pertaining to RFP 2019-697.

61

62 Mayor Snover Motioned to Reconsider and Rescind the previous award
63 Municipal Services RFP to Unsicker Law, PC SECONDED by Commissioner
64 Sipe

65

66 All Voted Aye; Motion Passed Five to Zero

67

68 Mayor Snover open for discussion on RFP 2019-697 Municipal Legal
69 Services for discussion among Commission. Commissioner Randall mentioned
70 that after reviewing the RFP results and not being at the last commission
71 meeting he mentioned that the reason we go through the process and staff
72 evaluates the firms, that he trusts the staff and their recommendations on
73 matters such as this. Mayor Snover added that for the public and staff in
74 attendance to understand his point of view that he didn't believe that staff did
75 something wrong or did something bad and that he supports their decisions,
76 choices and processes that staff go through and thinks that there is some
77 retooling in the RFP process that perhaps need to be considered and he
78 appreciates all the hard work and extra effort that staff put into it to come to the
79 conclusions that they came to. He mentioned that they looked at numbers and
80 with the assistant of Mr. Zamora that he shinned a light on a few things that
81 might have been nice to have had a little counsel and guidance leading up to
82 that and with that notwithstanding he appreciated Mr. Zamora's assistance on
83 this and bringing things in shaper focus for the Commission and for all of us
84 and that this was definitely a learning process for many of us and that he has
85 learned a few things moving forward that they encounter a process like this.

86

Staff Summary Report

MEETING DATE: October 8, 2019
AGENDA ITEM: V. CONSENT AGENDA (C)
AGENDA TITLE: Contract for Library Services

ACTION REQUESTED BY: Staff
ACTION REQUESTED: Approval
SUMMARY BY: Sherlynn Morgan

PROJECT DESCRIPTION / FACTS

- San Juan County has submitted their contract for library services to the City for FY20. The County appropriates funds to our City for library services based on the premise that the City will provide the same level of services to County residents as we do to City residents.
- Annual funding provided by San Juan County in support of these services is \$5,000.

PROCUREMENT

- N/A

FISCAL IMPACTS

- The FY20 Adopted Annual Budget, General Fund, includes this level of funding from San Juan County for the Library.

SUPPORT DOCUMENTS: Contract for Library Services

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Contract for Library Services

CONTRACT FOR LIBRARY SERVICES

THIS AGREEMENT, made and entered into this _____ day of _____, 2019, by and between the City of Aztec, New Mexico, a municipal corporation, hereinafter called "the City" and the County of San Juan, a political subdivision of the State of New Mexico, hereinafter called "the County".

WHEREAS, pursuant to NMSA 1978, §4-36-2 (1965), the County is authorized to appropriate funds for library services;

WHEREAS, the County does not operate library facilities for its citizens; and

WHEREAS, the City has agreed to operate a library facility and offer library services to all residents of the County on the same basis as such services are offered to residents of the City. Additionally, this agreement will assign Legal Service Area (LSA) population allocations to San Juan County libraries in compliance with New Mexico Administrative Code (NMAC) requirements. Each San Juan County Public Library will use the most recent U.S. Census for their discreet population figures with the population within the city limits of Aztec, New Mexico allocated to the Aztec Public Library.

NOW THEREFORE, the parties mutually agree:

1. The City shall provide library facilities and services to County residents on the same basis and to the same extent as those provided to City residents.
2. As compensation for the above, the County agrees to appropriate the sum of Five Thousand Dollars (\$5,000.00) and to pay said sum to the City as consideration for the use and services of the library facility located within the municipal limits of the City.
3. The City shall keep books and records of all expenditures made pursuant to this Agreement, and keep such books and records available for inspection and audit by the County from time to time.
4. The term of this agreement shall be one year, commencing July 1, 2019, and ending June 30, 2020. Either party may terminate this agreement on 30 days written notice to the other party. If the agreement is terminated, the total compensation paid shall be prorated on a monthly basis and an amount equal to the compensation for the number of months remaining in the original term shall be refunded to the County.

EXECUTED the day and year set out above.

**SAN JUAN COUNTY BOARD OF
COUNTY COMMISSIONERS**

By Mike Stark
Mike Stark, County Manager

**APPROVED AS TO FORM
SAN JUAN COUNTY ATTORNEY**

By: James F. Scurry

CITY OF AZTEC

By _____
Victor Snover, Mayor

**APPROVED AS TO FORM
CITY OF AZTEC ATTORNEY**

By: _____

Staff Summary Report

MEETING DATE: October 8, 2019
AGENDA ITEM: V. CONSENT AGENDA (D)
AGENDA TITLE: Senior Citizen Services Agreement

ACTION REQUESTED BY: Staff
ACTION REQUESTED: Approval
SUMMARY BY: Sherlynn Morgan

PROJECT DESCRIPTION / FACTS

- San Juan County has submitted their contract for Senior Citizen Services to the City for FY20. The County appropriates funds to our City for Senior Citizen Services based on the premise that the City will provide the same level of services to County residents as we do to City residents.
- Annual funding provided by San Juan County in support of these services is \$4,000.

PROCUREMENT

- N/A

FISCAL IMPACTS

- The FY20 Adopted Annual Budget, General Fund, includes this level of funding from San Juan County for the Senior Center

SUPPORT DOCUMENTS: Senior Citizen Services Agreement

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Senior Citizen Services Agreement

SENIOR CITIZEN SERVICES AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____ 2019, by and between San Juan County, a political subdivision of the State of New Mexico (hereinafter referred to as "the County"), and the City of Aztec, a municipal corporation (hereinafter referred to as "the City").

WHEREAS, the County is authorized to contract for services to be provided to senior citizens living in San Juan County; and

WHEREAS, the City is willing and able to provide services to senior citizens living in San Juan County.

NOW, THEREFORE, it is understood and agreed as follows:

1. The City shall provide regularly scheduled services to senior citizens living within the boundaries of the City for fiscal year 2019-2020, and such services shall be comparable to those provided by the other senior citizens centers within the County.

2. Upon request by the City, the County shall provide to the City the sum of Four Thousand Dollars (\$4,000.00). This sum shall be used only to provide the services to senior citizens described herein.

3. At the conclusion of the fiscal year, the City shall forward to the County a written report detailing the services performed on behalf of senior citizens pursuant to this Agreement.

4. The City may contract with a subcontractor to provide the services described herein, but only with the express written consent of the County.

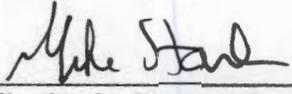
5. The City shall maintain records of all expenditures made under this Agreement, and the City's records shall be available for inspection and audit by the County during normal business hours.

6. The term of this Agreement shall be one year, commencing July 1, 2019 and ending June 30, 2020. Either party may terminate this Agreement on thirty (30) days written notice to the other party. If the Agreement is terminated, the total compensation paid shall be prorated on a monthly basis and an amount equal to the compensation for the number of months remaining in the original term shall be refunded to the County.

The foregoing being clearly understood and agreed to, this Agreement is hereby effective as of the date entered above.

SAN JUAN COUNTY, NEW MEXICO

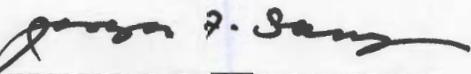
CITY OF AZTEC

By 
Mike Stark, County Manager

By _____
Victor Snover, Mayor

**APPROVED AS TO FORM
SAN JUAN COUNTY ATTORNEY**

ATTEST:

By 

By: _____
Karla Sayler, City Clerk

**APPROVED AS TO FORM
CITY OF AZTEC ATTORNEY**

By: _____

Staff Summary Report

MEETING DATE:	October 8, 2019
AGENDA ITEM:	V. CONSENT AGENDA (E)
AGENDA TITLE:	Red Apple Transit Agreement

ACTION REQUESTED BY:	Staff
ACTION REQUESTED:	Approval
SUMMARY BY:	Sherlynn Morgan

PROJECT DESCRIPTION / FACTS

- The Red Apple Transit provides public transportation services to the citizens of Aztec.
- The City of Aztec and the City of Farmington have entered into this agreement for the last several years.
- The agreement shall be valid until September 30, 2020.
- The City of Aztec will pay the City of Farmington \$19,750.00 for the annual contract. The payments will be made on a quarterly basis in the amount of \$4,937.50.

PROCUREMENT

- N/A

FISCAL IMPACTS

- The FY20 Annual Adopted Budget, General Fund, includes \$21,000 specific to Red Apple Transit services.

SUPPORT DOCUMENTS:	Red Apple Transit Agreement
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DEPARTMENT'S RECOMMENDED MOTION:	Move to Approve Red Apple Transit Agreement
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RED APPLE TRANSIT AGREEMENT FARMINGTON – AZTEC

The City of Aztec, New Mexico, hereinafter called “Aztec,” and the City of Farmington, New Mexico, hereinafter called “Farmington,” enter into this agreement to provide public transportation services between Aztec and Farmington.

WHEREAS, Aztec does not operate a public transportation service for citizens residing in Aztec.

WHEREAS, Farmington and Aztec desire to enter into an agreement whereby such services are provided to citizens of Aztec and desire to set forth herein their understanding and covenants concerning the services to be provided.

NOW, THEREFORE, it is mutually agreed and understood by and between the parties hereto, as follows:

1. **Services.** The City of Farmington shall provide Red Apple Transit service routes in Aztec. Stops include: all city limit stops entering the city (from direction of Farmington to Aztec) towards the former Micro-tel Inn and Suites, Main Street and exiting the city towards Farmington. Services are provided Monday through Friday from 6:25 am until 6:33 pm in the form of five bus runs and Saturday from 6:25 am until 6:33 pm in the form of three bus runs. Buses will not run on holidays: President’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year’s Day.

2. **Effective Date and Term.** This Agreement shall be effective October 1, 2019 and shall terminate on September 30, 2020.

3. **Compensation.** The compensation includes a Base Line Cost to operate a bus on a run (maintenance, fuel consumption, driver wages, etc.), the costs associated for each mile, and the amount of daily runs to the furthest bus stop distance (costs are not determined on number of bus stops). Aztec will compensate Farmington for the services rendered in the annual amount of Nineteen thousand seven hundred fifty dollars and 00/100 (\$19,750.00), payable in quarterly payments of Four thousand nine hundred thirty seven dollars and 50/100 (\$4,937.50).

4. **Purpose/Non-Discrimination.** Farmington agrees to expend said funds to provide the services described herein and for no other purpose. Farmington further agrees that it shall not discriminate in the provision of services hereunder on the basis of race, creed, national origin, age, sex, or religion.



CITY OF FARMINGTON

101 N. Browning Pkwy.
Farmington, NM 87401-2663

Phone: (505) 599-8221

Fax: (505) 599-8219

Email: amontoya@fmtn.org

5. Independent Contractor/Indemnity. It is understood and agreed that Farmington is an independent contractor and shall not act, or represent to be acting, as an employee, agent or servant of Aztec, and Farmington further agrees to hold Aztec harmless from and against all claims, suits, actions, costs, counsel fees, expenses, damages, judgments or decrees sustained by any person or persons and resulting from Farmington's actions, omissions, or the action or omissions of its employees, agents or servants under this Agreement.

6. **Termination.** Either party may terminate this Agreement on thirty (30) days written notice to the other party.

The parties hereto have executed this Agreement this ____ day of _____, 2019.

CITY OF FARMINGTON

CITY OF AZTEC

By *Robert Mayes*
Robert Mayes
City Manager

By _____
Steve Mueller
City Manager

Date: 9-17-19

Date: _____

Approved as to Form:
Legal Department
By *Ellen Woych*
Date 9-10-19

Staff Summary Report

MEETING DATE:	October 8, 2019
AGENDA ITEM:	V. CONSENT AGENDA (F)
AGENDA TITLE:	Resolution 2019-1156 Authorizing Closing of Time Certificates of Deposit for City

ACTION REQUESTED BY:	Finance Department
ACTION REQUESTED:	Approve Resolution 2019-1156 Authorizing Closing of Time Certificates of Deposit for City
SUMMARY BY:	Kris Farmer

PROJECT DESCRIPTION / FACTS

- The banks and independent auditors have asked that formal action be taken to open and close investments.
- This resolution requests the closing of Time Certificate of Deposit 0235815823, in the amount of \$1,000,000.00, interest rate of 2.39% for 12 months, maturing October 10, 2019, at Citizens Bank, Aztec, New Mexico.

SUPPORT DOCUMENTS:	Resolution 2019-1156
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DEPARTMENT'S RECOMMENDED MOTION:	Move to Approve Resolution 2019-1156 Authorizing Closing of Time Certificates of Deposit for City
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**CITY OF AZTEC
RESOLUTION 2019-1156**

AUTHORIZING CLOSING OF TIME CERTIFICATES OF DEPOSIT FOR CITY

WHEREAS, the City Commission of the City of Aztec, New Mexico, is the authorized Board of Finance of said City of Aztec, and as such has control of the manner and method that monies belonging to the City shall be handled; and

WHEREAS, the City Commission of the City of Aztec, New Mexico, passed, approved and adopted Resolution 2018-1095 Authorizing signatures for city accounts on August 14, 2018 and identified approved depositories for city funds; and

WHEREAS, time certificate of deposit 0235815823, in the amount of \$1,000,000.00, interest rate of 2.39% for 12 months is expiring October 10, 2019, at Citizens Bank, Aztec NM.

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY of the City of Aztec, New Mexico, to close time certificate of deposit 0235815823 in the amount of \$1,000,000 at Citizens Bank, Aztec, New Mexico.

PASSED, APPROVED, SIGNED AND ADOPTED this 8th day of October 2019, by the Aztec City Commission, City of Aztec, New Mexico

Mayor Victor C. Snover

ATTEST:

Karla Sayler, City Clerk CMC

Staff Summary Report

MEETING DATE: October 8, 2019
AGENDA ITEM: V. CONSENT AGENDA (G)
AGENDA TITLE: Resolution 2019-1157 Authorizing Opening and Closing of Time Certificate of Deposit for City

ACTION REQUESTED BY: Finance Department
ACTION REQUESTED: Approve Resolution 2019-1157 Authorizing Opening and Closing of Time Certificate of Deposit for City
SUMMARY BY: Kris Farmer

PROJECT DESCRIPTION / FACTS

- The banks and independent auditors have asked that formal action be taken to open and close investments.
- The Finance Department solicited all approved depositories (Resolution 2018-1095) for interest rates on Wednesday, October 2, 2019, for 12 month certificate of deposit in the amount of \$1,000,000.00.
- Rate quotes received

Financial Institution	Term	Rate	Earnings Projection
Citizens Bank	12 months	1.73%	\$17,300
Vectra Bank	12 months	1.40%	\$14,000
Four Corners Community Bank	12 months	1.80%	\$18,000
Bank of Southwest	No response		
Wells Fargo	No response		
High Desert Credit Union	No response		
LGIP	30 day net yield	2.083% **	\$20,830

** State Local Government Investment Pool (LGIP) 30 day net yield is based on today's (10/2/2019) earnings. It is anticipated this net yield rate will reduce over the next six months in response to investment market changes and the federal rates (financial forecasts indicate the possibility of two more federal rate reductions by the end of the year) reducing the earnings through LGIP.

- The Finance Department recommends retaining the funds locally at Four Corners Community Bank for a twelve month period. Funds are collateralized at 50% of the certificate (LGIP is not collateralized).

PROCUREMENT

- None

FISCAL IMPACTS

- Estimated interest earned at 1.80% for 12 months on \$1,000,000.00 is \$18,000.

SUPPORT DOCUMENTS: Resolution 2019-1157

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Resolution 2019-1157
Authorizing Opening and Closing of Time Certificates of Deposit for City

**CITY OF AZTEC
RESOLUTION 2019-1157**

**AUTHORIZING OPENING AND CLOSING OF TIME CERTIFICATES OF DEPOSIT
FOR CITY**

WHEREAS, the City Commission of the City of Aztec, New Mexico, is the authorized Board of Finance of said City of Aztec, and as such has control of the manner and method that monies belonging to the City shall be handled; and

WHEREAS, the City Commission of the City of Aztec, New Mexico, passed, approved and adopted Resolution 2018-1095 Authorizing signatures for city accounts on August 14, 2018 and identified approved depositories for city funds; and

WHEREAS, City of Aztec, New Mexico, Finance department solicited all banks authorized as designated depositories of said City per Resolution 2018-1095, for the term of 12 months; Four Corners Community Bank, Aztec, New Mexico offered an interest rate of 1.80% for 12 months.

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY of the City of Aztec, New Mexico, to open time certificate of deposit 104107 at Four Corners Community Bank, Aztec, New Mexico, in the amount of \$1,000,000 interest rate of 1.80% for a 12 month period, beginning October 10, 2019, and to close this time certificate of deposit on its maturity date, October 10, 2020, at Four Corners Community Bank, Aztec, New Mexico.

PASSED, APPROVED, SIGNED AND ADOPTED this 8th day of October 2019, by the Aztec City Commission, City of Aztec, New Mexico

Mayor Victor C. Snover

ATTEST:

Karla Sayler, City Clerk CMC

Staff Summary Report

MEETING DATE: October 8, 2019
AGENDA ITEM: V. CONSENT (H)
AGENDA TITLE: Resolution 2019-1158 Municipal Surplus

ACTION REQUESTED BY: Police Department, Utility Administration, City Administration, Community Development
ACTION REQUESTED: Approval of Resolution 2019-1158
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

- Several city departments have identified city property which no longer provides operational value to the department and requests approval of those items as municipal surplus.
- If the items are not sold they will be donated or disposed of according to NM Statute Sections 3-54-2 and 13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

PROCUREMENT

- N/A

FISCAL IMPACTS

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

SUPPORT DOCUMENTS: Resolution 2019-1158
Surplus List

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Resolution 2019-1158 Declaring Certain Municipal Property Not Essential For Municipal Purpose and Directing It Be Sold or Disposed.

**CITY OF AZTEC
RESOLUTION 2019-1158
October 8, 2019**

MUNICIPAL SURPLUS

POLICE DEPARTMENT SURPLUS

Department	Item/Model	
Police		<p>2002 Ford Crown Victoria Unit 001-130 S/N 2FAFP71W82X105946 Odometer: 79,015</p> <p>Acquisition Date: 09/21/2001</p> <p>Reason for Surplus: Not Required In Department</p> <p>Condition: Vehicle has been used to scavenge parts for other units in the Police fleet</p>

UTILITY ADMINISTRATION SURPLUS

Department	Item/Model	
Utility Administration		<p>Ithaca Receipt Printers (2) Model 153-P</p> <p>S/N KG004019526, KG002385448</p> <p>Acquisition Date: 2012</p> <p>Reason for Surplus: Parallel port not supported with new workstations</p> <p>Condition: Good</p>
Utility Administration		<p>Ithaca Receipt Printers (2) Model 152-P</p> <p>S/N KE004839263, KE004839262</p> <p>Acquisition Date: 2012</p> <p>Reason for Surplus: Parallel port not supported with new workstations</p> <p>Condition: Good</p>

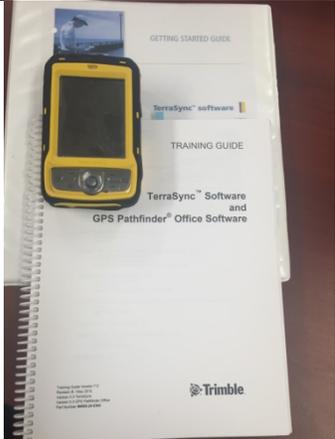
**CITY OF AZTEC
RESOLUTION 2019-1158
October 8, 2019**

MUNICIPAL SURPLUS

CITY ADMINISTRATION SURPLUS

Department	Item/Model	
City Administration		<p>Fijitsu Flatbed Scanner Model fi-4220C2</p> <p>S/N 105166</p> <p>Acquisition Date: 2006 (est)</p> <p>Reason for Surplus: No use for scanner; City has transitioned to a different model for desktop scanning</p> <p>Condition: Fair</p>

CITY ADMINISTRATION SURPLUS

Department	Item/Model	
Community Development		<p>Trimble Juno Handheld Unit, Training Guide & Software</p> <p>Acquisition Date: 2012 (est)</p> <p>Reason for Surplus: Product obtained through 911 training; for City use, additional licensing would need to be obtained (could not be added to current City licensing). GIS & Community Development advise there is no use for unit.</p> <p>Condition: Good</p>

CITY OF AZTEC RESOLUTION 2019-1158

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 8th day of October 2019.

VICTOR C. SNOVER, MAYOR

ATTEST:

KARLA SAYLER, CITY CLERK

Staff Summary Report

MEETING DATE: October 8, 2019

AGENDA ITEM: IX. BUSINESS ITEMS (A)

AGENDA TITLE: Intent to Adopt Ordinance 2019-495 An Ordinance Granting a Franchise to Comcast Cablevision of New Mexico / Pennsylvania, Inc. to Operate and Maintain a Cable System in the City of Aztec, New Mexico

ACTION REQUESTED BY: City Manager

ACTION REQUESTED: Approve Intent to Adopt Ordinance 2019-495 An Ordinance Granting a Franchise to Comcast Cablevision of New Mexico / Pennsylvania, Inc. to Operate and Maintain a Cable System in the City of Aztec, New Mexico

SUMMARY BY: City Staff

PROJECT DESCRIPTION / FACTS

The existing Comcast Franchise agreement was approved via Ordinance (# 2002-285) May 6th, 2003. The current agreement has expired. After discussions with the City Attorney and Staff, a new Franchise Agreement has been negotiated with Comcast.

PROCUREMENT / PURCHASING (if applicable)

N/a

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

N/a

SUPPORT DOCUMENTS: 2019 Comcast Franchise Agreement
2003 Comcast Agreement

DEPARTMENT'S RECOMMENDED MOTION: Move to Approve Intent to Adopt Ordinance 2019-495 An Ordinance Granting a Franchise to Comcast Cablevision of New Mexico / Pennsylvania, Inc. to Operate and Maintain a Cable System in the City of Aztec, New Mexico

ORDINANCE 2002-285

**AN ORDINANCE GRANTING A FRANCHISE
TO COMCAST CABLEVISION OF NEW MEXICO/PENNSYLVANIA, INC.
TO OPERATE AND MAINTAIN A CABLE SYSTEM
IN THE CITY OF AZTEC, NEW MEXICO**

TABLE OF CONTENTS

SECTION 1.	Definition of Terms	4
SECTION 2.	Grant of Authority	5
	2.1 Grant of Franchise	5
	2.2 Term of Franchise	6
	2.3 Renewal	6
	2.4 Reservation of Authority	6
	2.5 Competitive Equity	6
SECTION 3.	The System	7
	3.1 Permits and General Obligations	7
	3.2 Fiber Optics	7
	3.3 Conditions on City Rights-of-Ways, Streets, Alleyways, and Easements	7
SECTION 4.	Service Obligations	9
	4.1 General Service Obligations	9
	4.2 Video Programming Services	9
	4.3 No Discrimination	9
	4.4 New Developments	9
	4.5 Prohibition Against Reselling Services	9
SECTION 5.	Fees and Charges to Customers	9
	5.1 Rates, Fees, Charges	10
SECTION 6.	Customer Service Standards, Customer Bills, Privacy Protection	10
	6.1 Customer Service Standards	10
	6.2 Customer Bills	10
	6.3 Privacy Protection	10
SECTION 7.	Oversight and Regulation by the City	10
	7.1 Franchise Fees	10
	7.2 Franchise Fees Subject to Audit	11
	7.3 Oversight of Franchise	11
	7.4 Technical and Construction Standards	11
	7.5 Maintenance of Books, Records and Files	12
	7.6 Transfer of Change of Control of Franchise	12
	7.7 City's Right to Purchase System	12

SECTION 8. Insurance and Indemnity	13
8.1 Insurance	13
8.2 Indemnification	14
SECTION 9. System Description and Service	15
9.1 System Capacity	15
9.2 Service to School Buildings	15
9.3 Service to City Municipal Buildings	15
9.4 Cable Access Channel	15
9.5 Emergency Override	15
SECTION 10. Enforcement and Termination of Franchise	16
10.1 Notice of Violation or Default	16
10.2 Grantee's Right to Cure or Respond	16
10.3 Public Hearings	16
10.4 Enforcement	17
10.5 Technical Violation	18
SECTION 11. Miscellaneous Provisions	18
11.1 Force Majeure	18
11.2 Right of Acquisition by the Franchising Authority	18
11.3 Continuance of Operation after Revocation	19
11.4 Notice	19
11.5 Entire Agreement	19
11.6 Severability	20
11.7 Governing Law	20
11.8 Modification	20

ORDINANCE 2002-285

AN ORDINANCE GRANTING A FRANCHISE TO COMCAST CABLEVISION OF NEW MEXICO/PENNSYLVANIA, INC., TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF AZTEC, NEW MEXICO.

The City, having determined that the financial, legal, and technical ability of the Grantee (Comcast) is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a cable system on the terms and conditions set forth herein.

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF AZTEC, NEW MEXICO:

SECTION 1 Definition of Terms

1.1 Terms.

For the purposes of this Ordinance, capitalized terms, phrases, words and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. 521 et seq. (the Cable Act"), unless otherwise defined herein.

- A. "Basic Cable" is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- B. "Cable Service" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any which is required for the selection or use of such video programming or, other services.
- C. "Cable System" means the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that are designed to provide Cable Service.
- D. "Effective Date" means June 1, 2003.
- E. "FCC" means the Federal Communications Commission or successor governmental entity thereto.
- F. "Franchise" means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction, maintenance and operation of a Cable System.
- G. "Franchise Agreement", or "Agreement", shall mean this Agreement and any amendments or modifications hereto.
- H. "Franchise Area" means the present legal boundaries of the City of Aztec, New Mexico as of May 29, 2002, and shall also include any additions thereto, by annexation or other legal means.

- I. *"Franchising Authority"* means the City of Aztec, New Mexico or lawful successor, transferee, designee or assignee thereof.
- J. *"Grantee"* means Comcast Cablevision of New Mexico/Pennsylvania, Inc., or the lawful successor, transferee, or assignee thereof.
- K. *"Gross Revenue"* means any and all revenue received by the Grantee from the operation of the Cable System to Subscribers in the Franchise Area. For purposes of paying franchise fees, Gross Revenues does not include bad debt, returned check charges, retail sales, refundable deposits, investment income, nor any taxes, fees or assessments imposed and/or assessed by any governmental agency and unrecovered equipment replacement charges. Gross Revenues include revenues from Cable Services delivered on the Cable System in the Franchise area calculated in accordance with generally accepted accounting principles.
- L. *"Person"* means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- M. *"Public Way"* means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City within the Franchise Area, which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating and maintaining the Grantee's Cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.
- N. *"Public, Educational and Governmental Access"* means cable channel(s) dedicated to the Franchising Authority, or its assigns, by the Grantee, to provide local information to those Subscribers in the Franchise Area. Use may include simple roll information, or active public access.
- O. *"Standard Installation"* is defined as 125 feet from the nearest cable distribution line to the Subscriber's demarcation line.
- P. *"Subscriber (or Customer)"* means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2

Grant of Authority

2.1 Grant of Franchise.

The City hereby grants to the Grantee under the Cable Act a nonexclusive Franchise, which authorizes the Grantee to construct, operate and maintain a Cable System in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any

Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Agreement shall be construed to prohibit the Grantee from offering any service over the Cable System that is not prohibited by federal, state or local law.

2.2 Term of Franchise.

The term of the Franchise granted hereunder shall be for an initial term of ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement. If Grantee is in compliance with the material provisions of this agreement at the conclusion of the initial ten (10) year term, as determined by the Grantor, a five (5) year extension to the Franchise shall be granted to Grantee.

2.3 Renewal.

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4 Reservation of Authority.

Nothing in this Agreement shall:

- (a) abrogate the right of the Franchising authority to perform any public works or public improvements of any kind; or
- (b) be construed as a waiver of any code or ordinance of general applicability lawfully promulgated by the City; or
- (c) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.5 Competitive Equity.

2.5.1 The Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to, franchise fees; insurance; system build-out requirements; performance bonds or similar instruments; public, education and access channels and support; customer service standards; required reports and related recordkeeping; and notice and opportunity to cure. If any such additional and/or competitive franchise is granted by the City which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the City agrees that it shall amend this Franchise Agreement to include any more favorable or less burdensome terms or conditions.

2.5.2 In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchising Area, in whole or in part, the City shall serve a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight service.

SECTION 3 The System

3.1 **Permits and General Obligations.**

The Grantee shall be responsible for obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. The City shall not unreasonably delay or deny such approval. Construction, installation and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way. Any new construction or rebuilds will be coordinated through the City's Electric and Public Works Directors, and, in keeping with the City's lawful policies and ordinances.

3.2 **Fiber Optics.**

The City and the Aztec School District have installed a fiber optic line within the Franchise Area. If Grantee considers such technology within the Franchise Area, the Grantee shall consider utilizing such fiber optic line where economically and technologically feasible to do so.

3.3 **Conditions on City Rights of Ways, Streets, Alleyways and Easements:**

3.3.1 New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance notice from the City (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, the City shall, upon written request of the Grantee, make application for such funds on behalf of the Grantee.

3.3.2 Relocation of Existing Lines. The Grantee shall, upon reasonable prior written request (which shall not be less than thirty (30) business days) and at its own costs and expense, move, remove, and/or relocate lines due to street or other public excavation, repair or construction of a city-owned facility or in connection with a city public works project. If it is determined that it is economically feasible to do so, Grantee may be required to relocate their existing Cable System underground. In such instance, Grantee and City shall make all best efforts to locate Grantee's infrastructure in the same trench as City electric utilities. If public funds are available to any Person for the purpose of defraying the cost of any of the foregoing, the City shall, upon written request of the Grantee, make application for such funds on behalf of the Grantee.

3.3.3 Relocation at the Request of Third Party. The Grantee shall upon written request of any Person holding a permit issued by the City to move any structure or temporarily move its wires to permit the moving of such structure; provided that:

- i. Grantee may impose a reasonable charge on any Person for the movement of its wires; and
- ii. Grantee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

The Grantee may require payment in advance, except that a residential cable service subscriber shall not be charged a fee to temporarily move a cable line on the subscriber's property.

3.3.4 Restoration of Public Ways. If in connection with construction, operation maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

3.3.5 Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage or injuries. All work undertaken on the Cable System shall be performed in accordance with applicable FCC or other federal, state and local statutes, ordinances, rules and regulations, including the National Electric Code, the National Electrical Safety Code and any other applicable safety codes. The Cable System shall not unreasonably endanger or interfere with the safety of Persons in the Franchise Area.

3.3.6 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

3.3.7 Aerial and Underground Construction. If all or part of the transmission and distribution facilities of all the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable System transmission and distribution facilities underground; provided that such facilities are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any area of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall if economically feasible construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground in consultation with the City's Electrical Director and/or the City Manager. The Grantee shall be required to obtain the appropriate permit(s) and approval(s) before proceeding with any aerial or underground construction

SECTION 4
Service Obligations

4.1 General Service Obligations.

The Grantee shall make Cable Service available to every residential unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously un-served homes located within 125 feet of the Grantees distribution cable. The Grantee may impose an additional charge in excess of its regular installation charge for any service requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the 125 foot standard set forth above.

4.2 Video Programming Services.

The Grantee shall offer to all Customers a diversity of video programming services.

4.3 No Discrimination.

Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors or consultants, nor any other Person shall discriminate or permit discrimination between or among any Persons in the availability of Cable Service provided in the connection with the Cable System in the Franchise Area. A Person shall receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied.

4.4 New Developments.

The City shall provide the Grantee with thirty (30) days notice prior to the issuance of building or development permits for planned developments within the Franchise Area requiring installation of underground cable facilities. The City agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities, and at least ten (10) business days written notice of the date of availability of open trenches. The developer shall be responsible for the digging and backfilling of all trenches. Grantee shall be responsible for engineering and deployment of labor applicable to its cable facilities and digging and backfilling of trenches for purposes of repair and maintenance of its cable.

4.5 Prohibition Against Reselling Services.

No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, or signal transmitted over the Cable System by the Grantee.

SECTION 5
Fees and Charges to Customers

5.1 Rates, Fees, Charges.

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall

be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law.

SECTION 6

Customer Service Standards; Customer Bills; Privacy Protection

6.1 Customer Service Standards.

The City hereby adopts the customer service standards set forth in Part 76, 76.309 of the FCC's rules and regulations, as amended from time to time. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Customer Bills.

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that is not misleading and does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may be otherwise be permitted by Section 622(c) of the Cable Act 47 U.S.C. 542(c).

6.3 Privacy Protection.

The Grantee shall comply with Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 7

Oversight and Regulation by the City

7.1 Franchise Fees.

The Grantee shall pay to the City a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Service within the Franchise Area. Provided, however, that the Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service within the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee, which shows the basis for the computation of all Gross Revenue actually received from the operation of the Cable system for the provision of Cable Service in the Franchise Area during the period for which such franchise fee payment is made.

7.2 Franchise Fees Subject to Audit.

7.2.1 Upon the completion of any such audit, the City shall provide a copy of the audit findings to the Grantee, including any and all substantiating documentation. The Grantee shall have thirty (30) days from receipt of the audit report to provide the City with a written response, including any substantiating documentation. Any "Finally Settled Amount(s)" due to the City as a result of such audit shall be paid to the City by the Grantee within (30) days from receipt of written notice of the acceptance of such "Finally Settled Amount" from the City. For purpose of this Section 7 the term "Finally Settled Amount(s)" shall mean the agreed- upon payment, if any, to the City, by the Grantee, as a result of any such audit. The City shall bear the expense of any inspection of the Grantee's books and records.

7.2.2 However, after conducting an audit, the City thereafter shall not claim franchise fees for the audited period outside of any identified as due by such audit. The City's right to audit shall expire five (5) years after each franchise fee payment has been made to the City.

7.3 Oversight of Franchise.

In accordance with applicable law, the City shall have the right to oversee, regulate and, upon reasonable prior written notice, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor the Grantee's compliance with the provisions of this Franchise Agreement.

7.4 Technical and Construction Standards.

7.4.1 FCC Standards. The Grantee shall comply with all applicable technical standards of the FCC as published. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The City shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

7.4.2 Construction, Installation and Maintenance. The Grantee shall perform construction, installation and maintenance in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration. The Grantee shall comply with the National Electrical Safety Code (National Bureau of Standards), the National Electrical Code (National Bureau of Fire Underwriters) and other applicable federal, state, and local regulations (Pole Agreements). Any antenna structures used in the Cable System shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation. All working facilities and conditions used during construction, installation and maintenance of the Cable System shall comply with the standards of the Occupational Safety and Health Administration. The Grantee

shall maintain equipment capable of providing standby power for the head end and transport system for a minimum of two (2) hours. Upon receiving reasonable advance notice from the City, the Grantee shall remove any abandoned portion of the Cable System pursuant to federal law.

7.5 Maintenance of Books, Records and Files.

7.5.1 Books and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the City, upon reasonable prior written notice to the Grantee, may review such of the Grantee's books and records regarding payment of franchise fees and the provision of Cable Service in the Franchise Area for the previous five (5) years, and which are reasonably necessary to monitor the Grantee's compliance with the provisions of this Franchise Agreement at the Grantee's business office., during normal business hours, and without unreasonably interfering with the Grantee's business operations.

7.5.2 File for Public Inspection. Notwithstanding anything to the contrary set forth in Section 7, the Grantee shall not be required to disclose information it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives and agents of the City that have a need to know, or in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act. For purposes of Section 7, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive.

7.6 Transfer of Change of Control of Franchise.

Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable system in order to secure indebtedness, or (ii) a transfer to an entity owned and/or controlled by the Grantee. Within thirty (30) days of receiving a request for transfer, the City shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the City has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent to the transfer shall be deemed given.

7.7. City's Right to Purchase System.

7.7.1 Upon expiration of the term of the Franchise and denial of any renewal of the Franchise, or upon any other termination of the Franchise, as provided for in this

Agreement or by law, the City, at its election, shall have the option to purchase the Operator's Cable System. The City shall notify the Operator within sixty (60) days of its election to purchase the Cable System.

- 7.7.2** If the City elects to purchase the Cable System based upon the denial of a Franchise renewal, the price for the Cable System shall be the fair market value determined on the basis of the Cable System, valued as a going concern, but with no value allocated to the Franchise itself.
- 7.7.3** Notwithstanding subsection 7.7.2, if the City elects to purchase the Cable System for any reason other than a denial of a Franchise renewal, the purchase price for the Cable System shall be the equitable price.
- 7.7.4** The purchase price set forth in subsections 7.7.2 and 7.7.3 shall be determined by three appraisers with experience in valuing communications and cable systems. One shall be appointed by the City within thirty (30) days of the notice to the Operator of an election by the City to purchase the system. One shall be appointed by the Operator within thirty (30) days of the appointment of an appraiser by the City. The two appointed appraisers shall appoint a third appraiser within thirty (30) days. The appraisers shall calculate the value of the Cable System and within sixty (60) days submit a report detailing the value of the system. The report shall include all of the supporting documentation used by each appraiser to determine the value of the Cable System. If the three appraisers are unable to agree upon a price, the price shall be the average of the three appraisals; provided that if any appraisal is more than fifty percent (50%) higher or lower than the next closest appraisal, such appraisal shall be disregarded and the price shall be the average of the other two.
- 7.7.5** Within sixty (60) days after receipt of the final report from the appraisers, the City shall notify the Operator of its decision to purchase the Cable System. If City does not proceed with steps to purchase the Cable System, the City shall reimburse the Operator for its cost related to the appraisal.

SECTION 8

Insurance and Indemnity

8.1 Insurance.

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide to the City, certificates of insurance designating the City and its officers, boards, commissions, elected officials, agents and employees as additional insured's and demonstrating that the Grantee has obtained the insurance required in this Section 8. Such policy or policies shall be in the minimum amount of:

- (a) One million dollars (\$1,000,000.00) for bodily injury or death to any one person;
- (b) One million dollars (\$1,000,000.00) for bodily injury or death to any two or more persons resulting from one occurrence, and;

- (c) One million dollars (\$1,000,000.00) for property damage resulting from any one accident.

Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. Such policy or policies, if lost or lapsed, must be replaced with the same coverage so that no gaps in insurance coverage occur during the course of this Agreement.

8.2 Indemnification.

8.2.1 No Recourse.

This Franchise is subject to the same immunities as the City or other Persons may have under applicable law.

8.2.2 Hold Harmless.

To the extent permitted by applicable law, the Grantee agrees to defend, indemnify and hold harmless City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorney's fees, liabilities, damages, orders, judgments, or decrees sustained by the City which arise out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation or repair of the system, the conduct of Grantee's business in the City, or the Grantee's enjoyment at exercise of its Franchise. The City will notify the Grantee in writing of any case in which its duty to indemnify applies if the Grantee is not a named party in the case. The Grantee will employ competent counsel, reasonably acceptable to the City attorney.

8.2.3 Defense of Indemnitees.

In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are to be indemnified hereunder, the Grantee shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of the City. The City will afford the Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of any claim or proceeding for which the Grantee is providing indemnification. The City will fully cooperate in the defense of any such claim and make available to the Grantee all such information under its control relating thereto.

8.2.4 Notice of Cooperation.

The City shall give the Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of Section 8.

8.2.5 Non-Waiver of Statutory Limits.

Nothing in this Agreement is intended to express or imply a waiver of the statutory provisions, of any kind or nature, as set forth in New Mexico statutes,

including the limits of liability of the City as exists presently or may be increased from time to time by the legislature.

SECTION 9

System Description and Service

9.1 System Capacity.

Grantee's Cable System shall be capable of providing a minimum of 45 channels of video programming with satisfactory reception available to its customers in the Franchise Area. Grantee agrees that it shall increase the number of channels available to customers to a minimum of 100 channels within ten (10) years from the effective date of this Agreement.

9.2 Service to School Buildings.

The Grantee shall provide free "Basic" and "Expanded Basic" tier Cable Service, and, if requested by the School Administrators and/or San Juan College East free installation and monthly service of one outlet to each public school located in the Franchise Area within 125 feet of the Grantee's distribution cable.

9.3 Service to City Municipal Facilities

The Grantee shall provide free "Basic" and "Expanded Basic" tier Cable Service, and free installation of two outlets to each municipal building located in the Franchise Area within 125 feet of the Grantee's distribution cable.

9.4 Cable Access Channel.

Upon completion of the upgrade to the Cable System, the Grantee shall provide to the City one free, specially-designated noncommercial cable access channel along with the equipment necessary to broadcast video or a scrolling informational marquee to all customers within the Franchise Area. The cost of the equipment provided by Grantee shall not exceed ten thousand dollars (\$10,000). The purpose of the cable access channel will be to inform the public of public meetings, agendas and events occurring within the Franchise Area and will be managed, scheduled, and programmed exclusively by the City or its designee.

9.5 Emergency Override.

The Grantee shall incorporate into its Cable System the capacity to permit Emergency Preparedness, in times of emergency, to override, by remote control, the audio of all Channels simultaneously that the Grantee may lawfully override. The Grantee shall provide emergency capacity pursuant to FCC rules. The Grantee shall cooperate with the City in the use and operation of the emergency alert override system. The City shall only permit authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the City shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency

use of its facilities by the City, including, but not limited to, reasonable attorneys fees and costs.

SECTION 10

Enforcement and Termination of Franchise

10.1 Notice of Violation or Default.

In the event the City believes that the Grantee has not complied with the material terms of the Agreement, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default. In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to forfeit and terminate the Franchise and all rights and privileges of the Grantee hereunder in the event of substantial breach of its terms and conditions. A substantial breach by the Grantee shall include, but not be limited to the following:

10.1.1 Failures.

- (a) An attempt to avoid performance on any material provision of the Franchise or practice any fraud or deceit upon the City or its Subscribers.
- (b) Failure to begin or complete any projects that are agreed upon as set forth in the Franchise Agreement by and between the Grantee and the City in the Franchise Area.
- (c) Failure to provide the Cable Services promised in the Franchise Agreement.
- (d) Failure to restore Cable Services after ninety-six (96) consecutive hours of interrupted service to the entire Cable System, except when approval of such interruption is obtained from the City;

10.1.2 Breaches.

The foregoing shall not constitute a substantial breach if the violation occurs but is without fault of the Grantee or occurs as a result of circumstances beyond its control.

10.2 Grantee's Right to Cure or Respond.

The Grantee shall have forty-five (45) days from the receipt of the City's notice described in Section 10.1, above:

- (a) To respond to the City, contesting the assertion of noncompliance or default, or
- (b) To cure such default, or
- (c) In the event that, by nature of the default, such default cannot be cured within the forty-five day (45) period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date the remedy will be completed.

10.3 Public Hearings.

In the event the Grantee fails to respond to the notice from the City as described in Section 10.1 above, or in the event Grantee fails to respond the City pursuant to Section

10.2 above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled City Commission meeting that is scheduled at a time that is not less than ten (10) business days there from. The City shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

10.4 Enforcement.

In the case of a substantial default of a material provision of the Franchise, the City may declare the Franchise Agreement to be revoked in accordance with the following:

- (a) The City may make a written demand that the Grantee comply with any such specific provision, rule, order, or determination under or pursuant to the Franchise. If the violation by the Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may place the issue of the violation of the Franchise before the City Commission. The City shall cause to be served upon the Grantee, at least thirty (30) days prior to the date of such hearing, a written notice of the time, place and purpose of the hearing. Public notice shall be given of the hearing and the issue(s) that the City Commission is to consider.
- (b) The City Commission shall hear and consider the issue(s), provide the Grantee with an opportunity to be heard, hear any other Person interested therein, and shall determine whether the Grantee is in substantial default of a material provision of the Franchise Agreement.
- (c) If the City Commission determines that the Grantee is in default and that the default was within the Grantee's ability to prevent, the City Commission may:
 - i. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
 - ii. Commence an action at law for monetary damages or seek other equitable relief; or
 - iii. In the case of a substantial default of a material provision of the Franchise, declare that the Franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the governing body may fix, such period shall not be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

10.5 Technical Violation.

The City agrees that it is not its intent to subject the Grantee to fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact upon the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the City and/or Subscribers.

SECTION 11
Miscellaneous Provisions

11.1 Force Majeure.

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, including termination, cancellation or revocation of the Franchise, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain/snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

11.2 Right of Acquisition by the Franchising Authority.

The right of the Franchising Authority to acquire Grantee's Cable System within the Franchise Area shall be as set forth in this Franchise Agreement and provided by federal law.

11.3 Continuance of Operation after Revocation.

In the case of a final determination of a lawful revocation of the Franchise, at the Grantee's request, which shall be made at its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. During such period of time, the Grantee is authorized to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System reasonably acceptable to the City, the Grantee and the City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation during the six (6) month period shall be deemed a waiver, nor an extinguishment of, any rights of either the City or the Grantee.

11.4 Notice.

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt request, postage prepaid, or by reputable overnight courier service and addressed as follows:

The Franchising Authority: **City Manager
City of Aztec
201 W. Chaco
Aztec, NM 87410**

The Grantee: **Comcast Cablevision of New Mexico/Pennsylvania,
Inc.
Kevin Bethke, Southwest Area Vice President
4611 Montbel Place NE
Albuquerque, NM 87107**

With a Copy to: **Comcast Cable Communications, Inc.
1500 Market St. 32nd Floor
Philadelphia, PA 191102
Attn: Legal Department**

**Comcast Cablevision of New Mexico/Pennsylvania,
Inc.
Tony Hotter, General Manager
1911 N. Butler Avenue
Farmington, NM 87401**

11.5 Entire Agreement.

This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. Any ordinance or section thereof that is in conflict with any provision of this Franchise Agreement is superseded by this Franchise Agreement.

11.6 Severability.

If any section, subsection, sentence, clause, phrase or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

11.7 Governing Law.

This Franchise Agreement shall be deemed to be executed in the United States of America, State of New Mexico, and shall be governed in all respects, including validity, interpretation and effect and construed in accordance with the laws of the State of New Mexico as applicable to contracts entered into and performed entirely within the State.

11.8 Modification.

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument in writing, duly executed by the Franchising Authority and Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of and appropriate resolution or order by the Franchising Authority as required by applicable law.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of this 6th day of May, 2003.

Attest: City of Aztec

Gail Aspromonte
Mayor Gail Aspromonte

By: Rebecca L. Howard
Rebecca L. Howard
City Clerk

Comcast Cablevision of New Mexico/Pennsylvania, Inc.

By: Kevin Bethke 5/7/03
Kevin Bethke
Southwest Area Vice President

date advertised 5/11/2003 PB
effective date 5/14/2003 PB

**City of Aztec
Ordinance 2019-495**

**An Ordinance Granting a Franchise to
Comcast Cablevision of New Mexico / Pennsylvania, Inc.
to Operate and Maintain a Cable System
in the City of Aztec, New Mexico**

WHEREAS: The City of Aztec entered into a franchise agreement with Comcast Cablevision of New Mexico / Pennsylvania, Inc. in 2002 to operate and maintain a cable system in the City of Aztec; and

WHEREAS: That agreement has come to expire; and

WHEREAS: Staff and attorneys have done their due diligence to create a new franchise agreement;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Aztec, New Mexico that the City Commission approves Ordinance 2019-495 which grants a franchise to Comcast Cablevision of New Mexico / Pennsylvania, Inc. to operate and maintain a cable system in the City of Aztec, New Mexico 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 Saylor, City Clerk CMC

APPROVE AS TO FORM:

City Attorney

Advertised Date of Final Adoption: _____

Effective Date of Ordinance: _____

FRANCHISE AGREEMENT
CITY OF AZTEC, NEW MEXICO
AND
COMCAST OF NEW MEXICO/PENNSYLVANIA, LLC

SECTION 1 - Definition of Terms.....	4
SECTION 2 - Grant of Authority	5
2.1. Grant of Authority	5
2.2. Term of Franchise.....	6
2.3. Renewal.....	6
2.4. Reservation of Authority.....	6
SECTION 3 – Construction and Maintenance of the Cable System	6
3.1. Permits and General Obligations.....	6
3.2. Conditions of Street Occupancy.....	7
SECTION 4 - Service Obligations.....	8
4.1. General Service Obligation.....	8
4.2. Programming.....	8
4.3. No Discrimination.....	8
4.4. New Developments.....	8
SECTION 5 - Fees and Charges to Customers	9
SECTION 6 - Customer Service Standards; Customer Bills; Privacy Protection	9
6.1. Customer Service Standards.....	9
6.2. Customer Bills.....	9
6.3. Privacy Protection.....	9
SECTION 7 - Oversight and Regulation by Franchising Authority	9
7.1. Franchise Fees.....	9
7.2. Franchise Fees Subject to Audit.....	10
7.3. Oversight of Franchise.....	10
7.4. Technical Standards.....	10
7.5. Maintenance of Books, Records, and Files.....	11
SECTION 8 – Transfer of Cable System or Franchise or Control of Grantee.....	11
SECTION 9 - Insurance and Indemnity.....	12
9.1. Insurance.....	12
9.2. Indemnification.....	12
SECTION 10 - System Description and Service.....	12
10.1. System Capacity.....	12
10.2. Service to School Buildings.....	13
10.3. Service to Governmental Facilities.....	13
SECTION 11 - Enforcement and Termination of Franchise	13
11.1. Notice of Violation or Default.....	13

11.2.	Grantee’s Right to Cure or Respond.....	13
11.3.	Public Hearings.....	13
11.4.	Enforcement.	14
11.5.	Technical Violation.....	14
SECTION 12 – Competitive Equity.....		15
12.1.	Purposes.....	15
12.2.	New Video Service Provider.	15
12.3.	Subsequent Change in Law.....	15
12.4.	Effect on This Agreement.	16
SECTION 13 - Miscellaneous Provisions		16
13.1.	Force Majeure.....	16
13.2.	Notice.....	17
13.3.	Entire Agreement.....	17
13.4.	Severability.	17
13.5.	Governing Law.....	18
13.6.	Modification.....	18
13.7.	No Third-Party Beneficiaries.....	18
13.8.	No Waiver of Rights.....	18

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Aztec, New Mexico (hereinafter, “City”) and Comcast of New Mexico/Pennsylvania, LLC (hereinafter, “Grantee”).

The City having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”), unless otherwise defined herein.

- 1.1. “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.
- 1.2. “Customer” means a Person or user of the Cable System who lawfully receives Cable Service there from with the Grantee’s express permission.
- 1.3. “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.
- 1.4. “Effective Date” means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the “Term” section herein.
- 1.5. “FCC” means the Federal Communications Commission, or successor governmental entity thereto.
- 1.6. “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.
- 1.7. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.
- 1.8. “Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

- 1.9. "Franchising Authority" means the City or the lawful successor, transferee, designee, or assignee thereof.
- 1.10. "Grantee" shall mean Comcast of New Mexico/Pennsylvania, LLC.
- 1.11. "Gross Revenue" means the Cable Service revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross Revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.
- 1.12. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.
- 1.13. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

SECTION 2 - Grant of Authority

2.1. Grant of Authority

The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

- 2.1.1. Subject to federal and state preemption, the provisions of this Franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this Franchise may not be unilaterally altered by the Franchising Authority

through subsequent amendment to any ordinance, rule, regulation, or other enactment of the Franchising Authority, except in the lawful exercise of the Franchising Authority's police power.

- 2.1.2. Notwithstanding any other provision of this Franchise, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the Franchising Authority that conflicts with its contractual rights under this Franchise, either now or in the future.

2.2. Term of Franchise.

The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. Renewal.

Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and City are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and City shall continue to comply with all obligations and duties under the Franchise.

2.4. Reservation of Authority.

Nothing in this Franchise Agreement shall (A) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or (C) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

SECTION 3 – Construction and Maintenance of the Cable System

3.1. Permits and General Obligations.

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2. Conditions of Street Occupancy.

- 3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify Grantee of such funding and make available such funds to the Grantee.
- 3.2.2. Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.
- 3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.
- 3.2.4. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.
- 3.2.5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming. The Grantee will provide the Franchising Authority 10 days advance notice of scheduled tree or other natural growth trimming except in emergency situations that affects Grantee's service.
- 3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and

distribution facilities, or any part thereof, aerially or underground upon written approval of the City of Aztec Electric Department Director. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

- 3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

SECTION 4 - Service Obligations

4.1. General Service Obligation.

The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of the Grantee's distribution cable.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2. Programming.

The Grantee shall offer to all Customers a diversity of video programming services.

4.3. No Discrimination.

The Grantee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments.

The Franchising Authority shall include the Grantee in the review process of proposed new developments within the Franchise Area. The Franchising Authority agrees to require the developer to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches. The Grantee will be required to utilize any open trench made available by the developer in the new development unless approved in writing by the City of Aztec Electric Department Director.

SECTION 5 - Fees and Charges to Customers

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection

6.1. Customer Service Standards.

The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills.

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3. Privacy Protection.

The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 7 - Oversight and Regulation by Franchising Authority

7.1. Franchise Fees.

The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be

compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

7.2. Franchise Fees Subject to Audit.

7.2.1. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

7.3. Oversight of Franchise.

In accordance with applicable law, the Franchising Authority shall have the right to, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement.

7.4. Technical Standards.

The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended

during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of three (3) years.

7.5.2. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Grantee of such request and cooperate with Grantee in opposing such request.

SECTION 8 – Transfer of Cable System or Franchise or Control of Grantee

8.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee, defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the

Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

SECTION 9 - Insurance and Indemnity

9.1. Insurance.

Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement

9.2. Indemnification.

The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

SECTION 10 - System Description and Service

10.1. System Capacity.

During the term of this Agreement the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming with satisfactory reception available to its customers in the Franchise Area.

10.2. Service to School Buildings.

The Grantee shall provide free Digital Starter Service and free installation at one outlet to each state accredited K-12 public and private school, not including "home schools," located in the Franchise Area within 125 feet of the Grantee's distribution cable.

10.3. Service to Governmental Facilities.

The Grantee shall provide free Digital Starter Service and free installation at one outlet to each municipal building located in the Franchise Area within 125 feet from the distribution point on the Cable System from which cable service can be provided to these facilities. "Municipal buildings" are those buildings owned or leased by the Franchising Authority for government administrative purposes, and shall not include buildings owned by Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. Such obligation to provide free Basic Cable Service shall not extend to areas of Municipal buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities). Such Cable Service shall not be located in public waiting areas or used to entertain the public nor shall they be used in a way that might violate copyright laws. Grantee does not waive any rights under applicable law regarding complimentary service. Should Grantee elect to begin offsetting the value of complimentary service against franchise fees, Grantee shall first provide Franchise Authority with ninety (90) days prior written notice.

SECTION 11 - Enforcement and Termination of Franchise

11.1. Notice of Violation or Default.

In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

11.2. Grantee's Right to Cure or Respond.

The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

11.3. Public Hearings.

In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The

Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.4. Enforcement.

Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising Authority may:

11.4.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

11.4.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

- (i) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.
- (ii) At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require.

11.5. Technical Violation.

The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.5.1. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.5.2. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION 12 – Competitive Equity

12.1. Purposes.

The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the City; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

12.2. New Video Service Provider.

12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchising Authority to provide video services to subscribers in the City, or (ii) otherwise begins to provide video services to subscribers in the City (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the City under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority.

12.2.2. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the City.

12.3 Subsequent Change in Law.

If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to subscribers in the City, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the City, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee’s written request the Franchising Authority shall: (i) permit the Grantee to provide video services to subscribers in the City on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this

Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to subscribers in the City. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.4 Effect on This Agreement.

Any agreement, authorization, right or determination to provide video services to subscribers in the City under Sections 12.2 or 12.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

12.4.1. The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

SECTION 13 - Miscellaneous Provisions

13.1. Force Majeure.

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Grantee's intention to subject the Grantor to penalties, fines, forfeiture or revocation of the Agreement for violations of the Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Grantor and/or Subscribers.

13.2. Notice.

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

City of Aztec
201 W. Chaco St.
Aztec, NM 87410
Attn: City Manager

To the Grantee:

Comcast of New Mexico/Pennsylvania, LLC
8440 Washington St NE
Albuquerque, NM 87113
Attn: Government Affairs Dept.

with a copy to:

Comcast Cable
1701 John F Kennedy Blvd.
Philadelphia, PA 19103
Attn.: Government Affairs Department

13.3. Entire Agreement.

This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.4. Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. Governing Law.

This Franchise Agreement shall be deemed to be executed in the State of New Mexico, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of New Mexico, as applicable to contracts entered into and performed entirely within the State.

13.6. Modification.

No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

13.7. No Third-Party Beneficiaries.

Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8. No Waiver of Rights.

Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Aztec, New Mexico this _____ day of _____, 2019.

For City of Aztec, New Mexico:

By: _____
Name: _____
Title: _____
Date: _____

For Comcast of New Mexico/Pennsylvania, LLC

By: _____
Name: Amy Lynch
Title: Regional Senior Vice President – Mountain West Region
Date: _____, 2019

Staff Summary Report

MEETING DATE: October 8, 2019
AGENDA ITEM: IX. BUSINESS ITEMS (B)
AGENDA TITLE: FY20 Funding Request: Four Corners Economic Development (4CED)

ACTION REQUESTED BY: City Commission
ACTION REQUESTED: Determination of Amount of Funding
SUMMARY BY: Kathy Lamb

PROJECT DESCRIPTION / FACTS

The FY20 Adopted Budget includes funding for Four Corners Economic Development in the amount of \$20,000. While the City Commission approved the annual budget, concerns were expressed regarding the level of funding the City was providing.

Based on available information, the City provided funding to San Juan Economic Development Services, Inc. beginning in July 1989, in the amount of \$2,500.00. The annual funding increased to \$4,500 during 1990s, to \$5,000 in 2009 and to \$20,000 in 2012. San Juan Economic Development Services changed their name to Four Corners Economic Development in 2012.

The only agreement which has been located was executed in 1989 with automatic renewals for three years.

Based on the City's previous participation, Four Corners Economic Development has presented the City with an invoice in the amount \$10,000, representing ½ of the funding for the current fiscal year. Staff requires direction from the City Commission if funding is to be provided to 4CEDS this fiscal year, and if so, at what amount.

PROCUREMENT / PURCHASING (if applicable)

N/A

FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

Available balance for appropriation by Commission: \$20,000.

SUPPORT DOCUMENTS: • Four Corners Economic Development Foundation Invoice 95361

RECOMMENDED MOTION: Move to Approve annual funding to Four Corners Economic Development in the amount of \$_____.

Four Corners Economic Development Foundation

Invoice

5101 College Blvd
Farmington, NM 87402

Date	Invoice #
9/27/2019	95361

Bill To
City of Aztec* 201 W. Chaco Aztec, NM 87410 Attn: Kathy Lamb

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
			9/27/2019			
Quantity	Item Code	Description			Price Each	Amount
	City of Aztec	1st half funding FY19 - 20			10,000.00	10,000.00
					Total	\$10,000.00