

**AG E N D A**  
**CITY OF AZTEC**  
**CITY COMMISSION MEETING**  
**July 14, 2020**  
**201 W. Chaco, City Hall**  
**6:00 p.m.**

**For The Regular Meeting of City of Aztec Commission to be held at**  
**6:00 pm Tuesday, July 14 , 2020**  
**it will be streamed live on [www.youtube.com](http://www.youtube.com) City of Aztec**

**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 June 23, 2020
- B. Farmington Metropolitan Planning Organization Joint Powers Agreement
- C. Northwest New Mexico Council of Governments Membership Agreement FY21
- D. Utility Department Record Destruction
- E. Finance Department Record Destruction

*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**

**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.

## **VII. CITIZENS INPUT (3 Minutes Maximum)**

Commission will take general public comment in written form via email or fax through 5:00 PM on Monday, July 13<sup>th</sup>. Hard copies can be faxed to 505-334-7609 or emailed to [ksayler@aztecm.gov](mailto:ksayler@aztecm.gov). These comments will be distributed to all commissioners for review to be addressed at the meeting.

## **VIII. BUSINESS**

- A. Intent to Adopt Ordinance 2020-507: 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. 550 Brewing Company, LLC Rent Forgiveness
- C. Best Friends Animal Society-Cat Life Saving Programs
- D. FY 21 Funding Application: Four Corners Economic Development, Inc.

## **IX. QUASI JUDICIAL HEARINGS (LAND USE)**

None

## **X. COMMISSIONER, CITY MANAGER, DEPARTMENT REPORTS**

## **XI. CLOSED SESSION**

Closed Session Pursuant to Section 10-15-1 (H)(7) Threatened or Pending Litigation Regarding Taxation and Revenue-Gross Receipts Tax Revenue and Regarding Aztec Police Department, City of Aztec, Chief Heal, and Captain Troy Morris.

## **XII. ADJOURNMENT**

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

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

1 CITY OF AZTEC  
2 COMMISSION MEETING MINUTES  
3 June 23, 2020  
4

5 **I. CALL TO ORDER**  
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7 Mayor Snover called the Meeting to order at 6:00 pm at the Aztec City Commission  
8 Room, City Hall, 201 W. Chaco, Aztec, NM. The Regular Meeting of City of Aztec  
9 Commission to be held at 6:00 pm Tuesday, June 23, 2020 will be streamed live on  
10 www.youtube.com  
11

12 **II. INVOCATION AND PLEDGE OF ALLEGIANCE**  
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- 14 A. Invocation (led by Mayor Pro-Tem Fry)  
15 B. United States Pledge of Allegiance (led by Commissioner  
16 Randall)  
17 C. New Mexico pledge of Allegiance (led by Commissioner Randall)

18 **III. ROLL CALL**  
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20 Members Present: (Members were on web call) Mayor Snover; Mayor Pro-Tem  
21 Fry; Commissioner Austin Randall; Commissioner Mark  
22 Lewis; Commissioner Mike Padilla (In Person)  
23

24 Members Absent: None  
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26 Others Present: City Manager Steve Mueller; City Attorney Tyson Gobble  
27 (Virtual); IT Director Wallace Begay; City Clerk Karla Saylor  
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29 **IV. APPROVAL OF AGENDA ITEMS**  
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31 MOVED by Commissioner Randall to approve the agenda as given;  
32 SECONDED by Mayor Pro-Tem Fry  
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34 All voted Aye: Motion passed five to zero  
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36 **V. CONSENT AGENDA**  
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- 38 A. Commission Meeting Minutes June 9, 2020  
39 B. Resolution 2020-1190 BLM Application for Land for Recreation or Public  
40 Purposes and Signatory Authority (Aztec Municipal Airport)  
41 C. Resolution 2020-1191 Uncollectible Utility Accounts Write Off  
42 D. Letter of Support for San Juan County Behavioral Health Investment Zone  
43 Grant Application  
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45 MOVED by Commissioner Randall to Approve the Consent Agenda as  
46 given SECONDED by Commissioner Lewis

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All voted Aye: Motion passed five to zero

**VI. ITEMS REMOVED FROM CONSENT AGENDA**

NONE

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

NONE

**VIII. BUSINESS ITEMS**

A. Final Adoption of Ordinance 2020-505 Amending Chapter 19 Public Library

City Manager Steve Mueller mentioned that the intent to adopt of this ordinance was done on May 26, 2020 and to date there has been no public response.

MOVED by Mayor Pro-Tem Fry to Approve Final Adoption of Ordinance 2020-505 Amending Chapter 19 Public Library SECONDED by Commissioner Lewis

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

B. Final Adoption of Ordinance 2020-506 Amending Chapter 16 Fee Schedule

City Manager Steve Mueller mentioned that this amends Chapter 16 fee schedule specific to the library. The intent to adopt was on May 26, 2020 and we have had no public comment.

MOVED by Commissioner Randall to Approve Final Adoption of Ordinance 2020-506 Amending Chapter 16 Fee Schedule SECONDED by Mayor Pro-Tem Fry

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

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

NONE

92 **XI. COMMISSIONER, CITY MANAGER, DEPARTMENT REPORTS**

93  
94 City Attorney Tyson Gobble mentioned that the 11<sup>th</sup> Judicial District, both  
95 Magistrate and District Court have submitted a plan to the Supreme Court to allow in  
96 person hearings and conduct activity in the normal course of business. So hopefully our  
97 courts will be open pretty soon.

98  
99 Commissioner Padilla mentioned that he attended the EDAB meeting last  
100 Thursday and he commended Roslyn on a great report of the piano project. He also  
101 attend the Airport Advisory Board meeting concerning the upgrade on the agreement for  
102 the renters, but they didn't have a quorum so the meeting has been rescheduled to July  
103 20, 2020. He asked if anything had been done in recognition of Nate Chapman who was  
104 selected for the naval academy.

105  
106 Mayor Snover mentioned that the letter was submitted to the High School like in  
107 years past, for all the folks that enlisted in whatever branch.

108  
109 Commissioner Lewis mentioned that he attended San Juan Safe Communities  
110 Initiative meeting today it was very informative. He keeps getting requests about mask  
111 usage so we need to encourage people to wear masks when they go into businesses.

112  
113 Mayor Pro-Tem Fry mentioned she also attended EDAB and the piano project hit  
114 big and they couldn't be doing it without the chamber. She continues to encourage  
115 people to support local businesses and also to join the Chamber or volunteer. She  
116 mentioned that they could really use people to help out with some of the projects. She  
117 will be turning in the Connie Gotch application tomorrow and hopefully receive funds.  
118 She has MPO on Thursday and she was unable to attend the NWNM seniors meeting.  
119 There will be another one as they finalize the transition from dissolving that organization  
120 and the City of Farmington will be taking on overseeing funding for the senior centers  
121 throughout the county.

122  
123 Mayor Snover mentioned that he was out of town and missed the Airport Advisory  
124 Board meeting and even though he is not a voting member he agrees that it is  
125 important, he has the next meeting on his calendar. He has an ECHO meeting  
126 tomorrow and he is pleased and impressed with the team that ECHO has throughout  
127 the state.

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129 **XII. ADJOURNMENT**

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132 Mayor Snover moved to adjourn the meeting at 6:20 pm **SECONDED** by  
133 Commissioner Lewis

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Mayor, Victor Snover

ATTEST:

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Karla Saylor, City Clerk

MINUTES PREPARED BY:

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

DRAFT

**Staff Summary Report**

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<b>MEETING DATE:</b>	July 14, 2020
<b>AGENDA ITEM:</b>	V. CONSENT AGENDA (B)
<b>AGENDA TITLE:</b>	Farmington Metropolitan Planning Organization Joint Powers Agreement

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<b>ACTION REQUESTED BY:</b>	Farmington Metropolitan Planning Organization (FMPO)
<b>ACTION REQUESTED:</b>	Approval
<b>SUMMARY BY:</b>	Steven M. Saavedra – Community Development Director

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**PROJECT DESCRIPTION / FACTS**

As a result of the 2000 census, the Farmington Metropolitan Planning Organization (FMPO) was created in 2003. The Farmington Metropolitan Planning Organization (FMPO) is a federally mandated transportation policy organization; composed of representatives from local and state governments. The United States Congress passed the Federal-Aid Highway Act of 1962, which required the formation of an MPO for any urbanized area with a population greater than 50,000. Federal funding for transportation projects and programs are channeled through this planning process. Congress created MPOs to ensure that existing and future expenditures of governmental funds for transportation projects and programs are based on a continuing, cooperative, and comprehensive planning process.

The member entities of the FMPO include the City of Aztec, the City of Bloomfield, Town of Kirtland, City of Farmington, San Juan County, and the New Mexico Department of Transportation. Elected officials on the policy committee and agency staff members on the technical committee represent each member entity. The policy committee member for the City of Aztec is Rosalyn Fry. The technical committee for the City of Aztec is Stephen Morse and Steven Saavedra. The Joint Powers Agreement (JPA) outlines the roles and responsibilities of the Farmington Metropolitan Planning Organization (FMPO) and the member entities. The FMPO Technical and Policy Committees reviewed and approved the 2020 Joint Powers Agreement (JPA) on June 10 and June 25, 2020.

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<b>SUPPORT DOCUMENTS:</b>	Farmington Metropolitan Planning Organization's Joint Powers Agreement
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**DEPARTMENT'S RECOMMENDED MOTION:** MOVE to Approve the Farmington Metropolitan Planning Organization (FMPO) Joint Powers Agreement (JPA).

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## **Joint Powers Agreement**

### **Between the Cities of Aztec, Bloomfield, Farmington, the Town of Kirtland, and San Juan County, For the Governance of the Farmington Metropolitan Planning Organization.**

This Joint Powers Agreement is entered into on this 1st day of September 2020 by and between: the **City of Aztec**, a municipal corporation, hereinafter referred to as "**Aztec**", the **City of Bloomfield**, a municipal corporation, hereafter referred to as "**Bloomfield**", the **City of Farmington**, a municipal corporation, hereafter referred to as "**Farmington**", the **Town of Kirtland**, a municipal corporation, hereinafter referred to as "**Kirtland**", and the **County of San Juan**, a political subdivision, hereinafter referred to as "**San Juan County**", all established as public entities in the State of New Mexico. This Agreement amends and replaces the previous Joint Powers Agreement dated June 13, 2018, under which the **Farmington Metropolitan Planning Organization**, hereinafter referred to as "**FMPO**", has been operating under pursuant to the Joint Powers Agreement Act, being Sections 11-1-1 et. Seq., NMSA 1978, as amended.

#### **WITNESSETH:**

WHEREAS, the area in San Juan County surrounding Aztec, Bloomfield, and Farmington was designated as the Farmington "Urbanized Area" as a result of the 2000 United States Census and became the Farmington Metropolitan Statistical Area in 2003, and Aztec, Bloomfield, Farmington, and San Juan County initially formed the Farmington Metropolitan Planning Organization (FMPO) through the adoption of a Joint Powers Agreement (hereinafter "JPA") on April 22, 2003, for the purpose of identifying regional transportation needs and developing a comprehensive transportation plan for the FMPO's metropolitan planning area (MPA); and,

WHEREAS, the Town of Kirtland incorporated in 2015 and joined the FMPO in 2018; and

WHEREAS, the parties hereto agree that it is in the best interests of Aztec, Bloomfield, Farmington, Kirtland and San Juan County, the member entities of the FMPO, to add the Town of Kirtland to the MPO, and to maintain and continue the Metropolitan Planning Organization, in order to conduct coordinated, continuing, and comprehensive transportation planning in the region; and,

WHEREAS, the FMPO shall continue to oversee and direct regional transportation policy and to accomplish general transportation planning within the MPA; and,

WHEREAS, Aztec, Bloomfield, Farmington, Kirtland, and San Juan County authorize the City of Farmington to contract with the New Mexico Department of Transportation (NMDOT) for the purpose of receiving funding to support the activities of the FMPO as the MPO's fiscal agent; and,

WHEREAS, FMPO's transportation policies are governed by the MPO Policy Committee that is comprised of elected and/or appointed officials, or their designated alternates, from Aztec, Bloomfield, Farmington, Kirtland, and San Juan County, the member entities of FMPO; and,

WHEREAS, pursuant to the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through

11-1-7, Aztec, Bloomfield, Farmington, Kirtland, and San Juan County are explicitly authorized to enter into a JPA to establish, govern, and manage a separate agency to possess and exercise common powers of the parties; and,

WHEREAS, this Joint Powers Agreement shall supersede and replace the previous Joint Powers Agreement dated June 13, 2018; and,

WHEREAS, FMPO will carry out the purpose and all duties specified in 23 CFR §450 Subpart C.

NOW, THEREFORE, in consideration of the premises and the covenants hereafter contained, the parties hereby agree as follows:

#### **SECTION ONE:**

**Authority:** The authority under which the parties have entered into this agreement are the New Mexico Statutes: Sec. 11-1-1 to 11-1-7 NMSA 1978 (Joint Powers Agreements Act); Sec. 3-18-1, Seq. NMSA 1978 (Municipal Code); Sec 4-37-1 et. Seq. NMSA 1978 (County Ordinance); Sec. 13-1-44, Sec. 13-1-111 through Sec. 13-1-117 and Sec. 13-1-135 and Sec. 13-1-136 NMSA 1978 (Procurement Code).

#### **SECTION TWO:**

**Term:** The term of this Agreement shall extend from the 1st day of October 2020 (or the first of the month following adoption to the 30th of September, 2022 and this Agreement shall be renewed automatically each year, subject to the appropriation of funds.

#### **SECTION THREE:**

**Fiscal Agent:** The parties agree that the Fiscal Agent for the Farmington MPO shall be the City of Farmington. As the Fiscal Agent, the City of Farmington shall be responsible for the accounting and administration of all funds necessary to operate the MPO, including co-signing the MPO's cooperative agreements with NMDOT. This shall include such operating expenditures as, but is not limited to, office supplies and equipment, office rent, utilities, vehicle purchase and maintenance, budgeting, auditing, procurement, personnel, information technology, and legal services. Any member entity may voluntarily contribute cash or in-kind services toward the MPO's operations expense. All expenditures by the MPO shall be done in accordance with the requirements of the New Mexico Procurement Code. All expenditures of Metropolitan Planning funds received under Title 23 U.S.C. Section 134, Metropolitan Planning, and Title 49 U.S.C. Section 5303, Metropolitan Planning, shall be done in accordance with State and Federal requirements related to the expenditures of such funds.

#### **SECTION FOUR:**

**Organizational Structure:** The organizational structure of the Farmington Metropolitan Planning Organization shall be as follows:

A. An MPO Policy Committee shall be formed to establish policy to govern the urban transportation planning process.

1. The MPO Policy Committee shall consist of:
  - a. One (1) member who shall be an elected or appointed official from Aztec.
  - b. One (1) member who shall be an elected or appointed official from Bloomfield.
  - c. Three (3) members who shall be elected or appointed officials from Farmington.
  - d. One (1) member who shall be an elected or appointed official from Kirtland.
  - e. Two (2) members who shall be an elected or appointed official from San Juan County.
  - e. One (1) member who shall be appointed by the New Mexico Department of Transportation (NMDOT).
  - f. Each member identified above shall be entitled to one (1) vote. Each member may have an alternate member who shall be formally designated by the Governing Body of that public agency and who shall be permitted to participate and vote in the absence of that member. A majority vote of five (5) members shall be required for any formal action taken by the MPO Policy Committee.
  - g. In addition, the Federal Highway Administration (FHWA), the New Mexico Department of Transportation (NMDOT), and other ex-officio (non-voting) members may be established by action of the MPO Policy Committee.
  - h. The MPO Policy Committee is governed by this JPA and the MPO's Committee Bylaws.
  
2. The function of the MPO Policy Committee shall be as follows:
  - a. Serve as a forum for cooperative decision-making in transportation-related matters by principal elected officials of local governments.
  - b. Provide general policy guidance and direction to the Metropolitan Planning Organization and to the Technical Committee for the urban transportation planning process.
  - c. Review and approve actions taken by the Metropolitan Planning Organization in its performance of those functions shown in Subsection C and Subsection D below.
  - d. Provide general policy guidance and direction to the Metropolitan Planning Organization Officer and MPO staff in the performance of his/her duties.
  - e. Receive and consider input to the transportation planning process from the citizens of the MPA.
  - f. Report the status of urban transportation planning at a public meeting at least annually.

- g. Periodically review and establish the jurisdictional boundaries of the MPA, subject to the review and approval of the Governor of the State of New Mexico, as required by law.
- h. Develop and approve an annual budget that is adequate to fund the required activities of the MPO.
- i. Undertake such other activities as it may deem necessary and appropriate to carry out transportation planning for the urban area.

B. An MPO Technical Committee shall be formed to act as technical advisors to the MPO Policy Committee.

- 1. The MPO Technical Committee shall consist of:
  - a. One (1) member who shall be appointed by Aztec.
  - b. One (1) member who shall be appointed by Bloomfield.
  - c. Three (3) members who shall be appointed by Farmington. One (1) of these members shall be appointed by the Red Apple Transit.
  - d. One (1) member who shall be appointed by Kirtland.
  - e. Two (2) members who shall be appointed by San Juan County.
  - f. One (1) member who shall be appointed by the New Mexico Department of Transportation (NMDOT).
- 2. Membership on the MPO Technical Committee should be made up of persons having expertise in transportation planning or programs or in transportation related planning or programs. The MPO Technical Committee is governed by this JPA and the MPO's Committee Bylaws.
- 3. Each member of the MPO Technical Committee identified above shall be entitled to one (1) vote. Each member of the MPO Technical Committee may designate an alternate member who shall be permitted to participate and vote in the absence of that MPO Technical Committee member. A majority vote of five (5) members shall be required for any formal action taken by the MPO Technical Committee.
- 4. In addition, the Federal Highway Administration (FHWA), the New Mexico Department of Transportation (NMDOT) and other appropriate ex-officio (non-voting) members may be established by action of the MPO Policy Committee.
- 5. The MPO Officer may be designated as a non-voting ex-officio member of the MPO Technical Committee by the Policy Committee. The MPO Officer and MPO staff shall provide staff assistance to the MPO Technical Committee as necessary, including the keeping and distribution of the agendas, minutes and other records in compliance with all applicable statutes.
- 6. The functions of the MPO Technical Committee shall be those designated by the MPO Policy Committee, including, but not limited to, providing technical information and analysis on transportation planning issues and projects; making recommendations regarding the priorities of individual transportation projects to

be included on the TIP, and such other functions as are specified elsewhere in this Agreement.

7. Advisory (voting and non-voting) members may also be designated to participate in the MPO Technical Committee from time to time by action of the MPO Policy Committee.
- C. The Metropolitan Planning Organization shall be designated by the Governor of the State of New Mexico, pursuant to Section 112 of the Federal Highway Act of 1973. The MPO boundary shall be shown in the attached Exhibit A. The MPO boundary shall be reviewed periodically and may be amended by the MPO Policy Committee, subject to the review and approval of the Governor of the State of New Mexico, as required by law.
- D. The Metropolitan Planning Organization, in cooperation with the State, shall perform the following functions:
1. Address the seven (7) National Planning Goals in the Fixing America’s Surface Transportation (FAST) Act, listed below, by establishing performance targets.

<b>Goal Area</b>	<b>National Goal</b>
Safety	To achieve a significant reduction in traffic fatalities and serious injuries on all public roads
Infrastructure condition	To maintain the highway infrastructure asset system in a state of good repair
Congestion reduction	To achieve a significant reduction in congestion on the National Highway System
System reliability	To improve the efficiency of the surface transportation system
Freight movement and economic vitality	To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development
Environmental sustainability	To enhance the performance of the transportation system while protecting and enhancing the natural environment
Reduced project delivery delays	To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies’ work practices

2. Because transportation planning studies are programmed for funding in the MPO’s United Planning Work Program (UPWP), specific consideration is given to the federal planning factors (23 USC 134). The FAST Act added two (2) new planning factors to the eight (8) factors established in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-

LU) transportation legislation. In accordance with the legislation, studies and strategies undertaken by the MPO shall:

- a. Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency.
  - b. Increase the safety of the transportation system for all motorized and nonmotorized users.
  - c. Increase the ability of the transportation system to support homeland security and to safeguard the personal security of all motorized and nonmotorized users.
  - d. Increase accessibility and mobility of people and freight.
  - e. Protect and enhance the environment, promote energy conservation, improve quality of life, and promote consistency between transportation improvements and state and local planned growth and economic development patterns.
  - f. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight.
  - g. Promote efficient system management and operation.
  - h. Emphasize the preservation of the existing transportation system.
  - i. Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation.
  - j. Enhance travel and tourism.
3. Carry out the metropolitan transportation planning process through the guidance of the USDOT-HUD-EPA livability principles, which shall provide for consideration of projects and strategies that will:
- a. Provide more transportation choices;
  - b. Promote equitable, affordable housing;
  - c. Enhance economic competitiveness;
  - d. Support existing communities;
  - e. Coordinate policies and leverage investment; and,
  - f. Value communities and neighborhoods.
4. Develop and publish a Unified Planning Work Program (UPWP) describing all urban transportation and transportation-related planning activities the MPO intends to undertake during the subsequent two year period.
5. Develop and implement a proactive Public Participation Plan (PPP) which will provide complete information to the public in a timely manner, address the public involvement requirements stated in the FAST Act, and provide an opportunity for access to key decisions.
6. Establish a performance-based approach to the transportation decision-making process and to transportation plans such as the MTP and TIP.

7. Prepare, and periodically update, a Metropolitan Transportation Plan (MTP) which identifies existing or future transportation facilities that should function as an integrated metropolitan transportation system or serve important national and regional transportation functions for a 20-year planning period, including a financial plan that demonstrates how the long range transportation plan can be implemented to maintain the system, make the most efficient use of existing transportation facilities to relieve congestion and maximize the mobility of people and goods, and indicates appropriate transportation enhancement activities. Furthermore, the MTP will include performance measures and targets as well as a report evaluating the condition of the transportation system based on these performance targets.
8. Develop and update a Transportation Improvement Plan (TIP) for the urbanized area which shall include a priority list of proposed federally supported projects within the time period specified by NMDOT and a financial plan which demonstrates how the TIP can be implemented. The TIP will include a description of how it will achieve the performance targets outlined in the MTP.
9. The developments of the TIP and the MTP, shall be coordinated with other providers of transportation within and connecting to the area within the MPA.
10. Coordinate performance targets with NMDOT to ensure consistency.
11. Integrate performance-based processes into other transportation plans.
12. Cooperate with NMDOT in the development of NMDOT's Long Range Transportation Plan (LRTP) for the MPA, pursuant to Section 134 of Title 23 and Section 5303 of Title 49.
13. Maintain a Traffic Forecast Model (Travel Demand Model) and maintain data on traffic counts and socioeconomic conditions (population, employment, and land use) for the area within the MPA.
14. Develop the Annual Listing of Federally Obligated Projects with obligated amounts for the MPO and publish the results annually on the MPO website.
15. Manage the expenditures of Metropolitan Planning funds received under Title 23 U.S.C. Section 134, Metropolitan Planning (PL funds), and Title 49 U.S.C. Section 5303, Metropolitan Planning, as amended, and under the direction of the MPO Policy Committee.
16. Enter into Agreement with NMDOT for funding and other matters as deemed necessary by the MPO Policy Committee.
17. Take such other actions as may be necessary as directed and approved by the MPO Policy Committee.

- E. The MPO staff, including the MPO Officer, shall be employees of the fiscal agent or a subcontractor to the fiscal agent retained specifically to manage the MPO. The MPO staff shall provide support and assistance to the MPO Policy and MPO Technical Committees and shall be responsible for the keeping and distribution of the agendas, minutes and other records in compliance with all applicable statutes. The fiscal agent or its subcontractor will house all personnel files of MPO employees, and MPO staff shall be responsible for providing updates to maintain personnel files. The fiscal agent or its subcontractor will provide human resources services, including payroll, for MPO employees. The fiscal agent or its subcontractor shall include participation by Policy Committee members in hiring decisions. Benefits and all policy matters related to personnel shall be provided by and governed by the fiscal agent or its subcontractor.
1. The principal duties of the MPO Officer are:
    - a. Maintain official plans and records of the MPO, manage the daily operations of the MPO, and prepare necessary reports as required by federal regulations and NMDOT.
    - b. Manage the budget and expenditures for the MPO in accordance with all applicable State and Federal Laws, as well as the Unified Planning Work Program (UPWP) as approved by the MPO Policy Committee, NMDOT, FHWA-NM, and FTA. Maintain a current record of expenditures by the State and FHWA for transportation projects and facilities within the MPO's planning area.
    - c. Develop and update the Unified Planning Work Program (UPWP), the Public Participation Plan (PPP), the Transportation Improvement Program (TIP), the List of Obligated Projects, and the Metropolitan Transportation Plan (MTP) for review by the MPO Technical Committee, and for approval by the MPO Policy Committee.
    - d. Ensure compliance with the State of New Mexico Open Meetings Act, and other applicable State Laws.
    - e. Co-signing the MPO's cooperative agreements with the NMDOT.
    - f. Supervise the other MPO staff.
  2. The principal duties of MPO staff are to ensure the MPO complies with all federal and state requirements applicable to metropolitan planning, including carrying out the necessary metropolitan planning activities and keeping and distributing agendas, minutes, and other records in compliance with all applicable statutes.

**SECTION FIVE:**

**Budgeting and Cost Allocation**

- A. The operating costs for the MPO shall be allocated to the member entities using the following formula that is based on proportions of the most current population estimates from the U.S. Census Bureau, 2010-2014 American Community Survey:

<b>Entity</b>	<b>Estimated Population</b>	<b>Percentage of Required Local Match</b>
Aztec	6,587	7%
Bloomfield	7,749	8%
Farmington	45,318	48%
Kirtland	471	1%
San Juan County (within the MPA)	34,275	36%
<b>Total</b>	<b>94,400</b>	<b>100%</b>

- B. The fiscal agent will invoice the entities on a quarterly basis for each entity's share of the actual operating cost of the MPO as well as provide members of the Policy Committee and the entities with an update on the MPO's financial status. Any expenditure deemed non-reimbursable by NMDOT shall require the approval of the Policy Committee and shall be subject to the funding formula contained in Paragraph A.
- C. The budget year for the MPO shall be from October 1 to September 30 of each year.
- D. The budget for the MPO shall be established annually based on figures provided for federal funds and approved by the MPO Policy Committee. The annual budget shall be established in a timely manner each year so that each entity can budget its share of the MPO's operating cost in its own annual budget.
- E. It is further agreed that the parties hereto assume that some of the expense of the continuing transportation planning process will be provided for by funds apportioned under Section 104 (f), 23 CFR or by grants made under Sections 8 or 9, 49 CFR. Expenses not so provided shall be assumed by the member agencies according to the cost allocation specified in Section Five of this Agreement. A listing of anticipated funding sources shall be contained in the annual budget that is developed to support the Unified Planning Work Program for Transportation Planning and which shall be presented to the MPO Policy Committee for approval.

## **SECTION SIX:**

**Severability:** It is hereby declared to be the intention of the parties that the articles, sections, sub-sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph, section, sub-section, or article of this Agreement, shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections, sub-sections, or articles of this Agreement, since the same would have been entered into by the parties without such invalid portion.

## **SECTION SEVEN:**

### **Amendment:**

- A. This Agreement may be supplemented or re-negotiated as necessary to meet changing conditions and as recommended by the MPO Policy Committee. This may include, but not be limited to, the following:
1. The passage of a new federal transportation bill that includes new or revised requirements for metropolitan planning.
  2. A significant change in membership and structure of the MPO that may result from an entity withdrawing from the MPO, additions or reductions of membership to the MPO committees, changes based on census data, or modifications to the MPO boundary.
- B. Except as to the funding formula contained in Section Five, Paragraph A., which may only be amended by unanimous consent of all parties, this Agreement may be amended by mutual agreement of any three (3) of the five (5) parties to the Agreement, as evidenced by written approval of the governing bodies or authorized officials of those three (3) parties.

## **SECTION EIGHT:**

**Approvals:** This agreement shall be subject to approval by the New Mexico Department of Finance and Administration pursuant to the New Mexico Joint Powers Agreements Act and pursuant to Sec. 13-1-135 NMSA 1978 and shall be effective as of the date of such approval. The MPA boundary, as initially established by this Agreement and as may be periodically amended by the MPO Policy Committee, shall be subject to the approval of the Governor of New Mexico, pursuant to 23 CFR 450.306.

**SECTION NINE: Termination**

- A. One entity may withdraw from this Agreement by giving ninety (90) days' notice to the other Entities.
- B. This agreement may be terminated by mutual agreement of any three of the five parties to this Agreement, as evidenced by written approval of the governing bodies or authorized officials of those three parties, and by giving written notice at least ninety (90) days prior to the effective date of termination to the NMDOT and all parties to the Agreement.

**SECTION TEN:**

**Conflict Resolution Process:** In the event of a disagreement between the Entities, it is agreed that the Entities will resolve any disagreements at the lowest possible level. If a disagreement cannot be resolved at the lowest level, the Conflict Resolution hierarchy in the following table will be followed. If other agencies are involved, personnel from equivalent organizational levels will be included in the conflict resolution process.

<b>Entity to Entity</b>	<b>Days to Escalate</b>
Technical Committee	Next monthly meeting
Policy Committee	Next scheduled meeting
Local Councils/Commissions	Next scheduled meeting

If the disagreement cannot be resolved at the Technical Committee level and the entities agree to escalate, the issue will be discussed with the Policy Committee at their next scheduled meeting. If an agreement still cannot be reached, then the issue will be escalated to the local councils and commissions at their next scheduled meetings.

Mediation and facilitation may be used at any level to help expedite resolution. Mediation will be at agreement as needed and shall be held within the MPO planning area.

**Disposition of Assets Upon Dissolution:** The Entities agree that if the MPO formed under this JPA is dissolved or for whatever reason otherwise ceases to exist, any remaining funds and equipment associated with the MPO will be disposed of as follows:

- A. Any remaining funds will be returned to the Entities in proportion to their contribution;
- B. Any remaining equipment and software will be returned to the Entity contributing it or, if the equipment was purchased with contributed funds, the equipment will be distributed in proportion to contribution made; and,
- C. Any remaining equipment purchased with federal or state grant funds will be subject to 2 CFR 200.313(e).

IN WITNESS WHEREOF, the Parties have here unto affixed their signatures:

THE CITY OF AZTEC, NEW MEXICO

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
AZTEC CITY CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
AZTEC CITY ATTORNEY

THE CITY OF BLOOMFIELD, NEW MEXICO

---

MAYOR

ATTEST:

---

BLOOMFIELD CITY CLERK

(SEAL)

APPROVED AS TO FORM:

---

BLOOMFIELD CITY ATTORNEY

THE CITY OF FARMINGTON, NEW MEXICO

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
FARMINGTON CITY CLERK

(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
FARMINGTON CITY ATTORNEY

THE TOWN OF KIRTLAND, NEW MEXICO

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
KIRTLAND TOWN CLERK

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
KIRTLAND TOWN ATTORNEY

THE COUNTY OF SAN JUAN, NEW MEXICO

\_\_\_\_\_  
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

ATTEST:

\_\_\_\_\_  
SAN JUAN COUNTY CLERK

(SEAL)

APPROVED AS TO FORM:

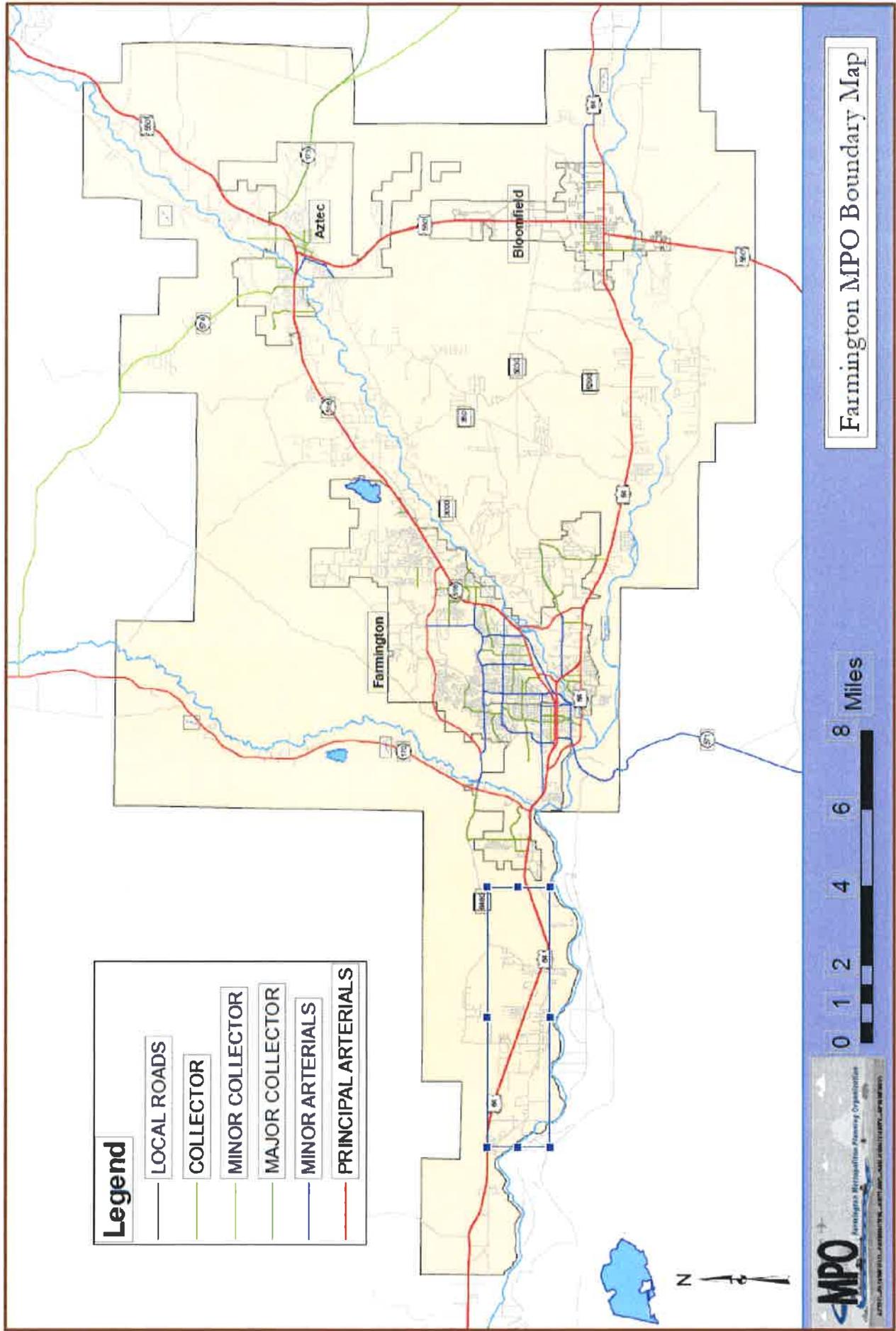
\_\_\_\_\_  
COUNTY ATTORNEY, SAN JUAN COUNTY

APPROVED:  
THE STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND  
ADMINISTRATION

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

\_\_\_\_\_  
DATE

EXHIBIT A FARMINGTON MPO BOUNDARY



# Staff Summary Report

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**MEETING DATE:** July 14, 2020  
**AGENDA ITEM:** V. CONSENT AGENDA (C)  
**AGENDA TITLE:** Northwest New Mexico Council of Governments Membership agreement with City of Aztec- FY21

---

**ACTION REQUESTED BY:** City Manager  
**ACTION REQUESTED:** Approve the Northwest New Mexico Council of Governments membership agreement with the City of Aztec for FY21  
**SUMMARY BY:** City Staff

---

## PROJECT DESCRIPTION / FACTS

### MEMBERSHIP AGREEMENT:

- Northwest New Mexico Council of Governments (NWNM COG) has prepared a Membership Agreement for Fiscal year 2021.
- All provisions of the agreement remain as in previous years.

### BOARD OF DIRECTORS APPOINTMENT:

- During the April 14, 2020 Commission meeting Commissioner Mike Padilla Sr. was appointed as the City's representative on the NWNM COG Board and City Manager Steve Mueller was appointed as the alternate.
- As per NWNM COG Board policies, the City must formally identify its official representative to the Board of Directors.

## PROCUREMENT / PURCHASING (if applicable)

## FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

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**SUPPORT DOCUMENTS:** ➤ Northwest New Mexico Council of Governments Membership Agreement with City of Aztec – FY21

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### DEPARTMENT'S RECOMMENDED MOTION:

Move to approve Northwest New Mexico Council of Governments Membership agreement with City of Aztec- FY21

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**NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS**

**MEMBERSHIP AGREEMENT**

with

**CITY OF AZTEC**

**Fiscal Year 2021**

---

This Agreement is entered into by and between Northwest New Mexico Council of Governments (hereinafter "COG") and City of Aztec (hereinafter "MEMBER"), pursuant to the following conditions and terms:

1. COG agrees to provide for the following:
  - a. Performance of professional work in service to the MEMBER, including specific assignments as requested and mutually concurred by the MEMBER and COG throughout the course of this Agreement, drawn from the COG's Menu of Services; such service to include assignment of a professional planner to direct Member Services, in alignment with the Member Dues & Services policy adopted by the COG Board of Directors.
  - b. Continued leadership and performance in local and regional development activities, as supported by local, state, federal and philanthropic grants and contracts.
  - c. Competent management and stewardship of the COG's resources and responsibilities, on behalf of its Members.
2. MEMBER agrees to provide for the following:
  - a. To remain a voting member on the COG's Board of Directors, to consist of up to one (1) representatives to the Board and one (1) alternate, and to participate in the COG's governance, policy development and administrative oversight.
  - b. To pay annual dues into the treasury of the COG in the amount of **\$3,000** per annum, such payment to be rendered in quarterly increments for the annual period July 1, 2020 through June 30, 2021.
3. It is mutually understood and agreed that:
  - a. A portion of the Membership dues shall be committed to the support of the COG organization as a whole and to its general operating and overhead expenses, including matching funds as required for certain state and federal grants;
  - b. A portion of the dues shall be available for direct communications with and services to the MEMBER, including specific assignments as requested and mutually concurred by the MEMBER and the COG; and
  - c. For significant tasks and assignments requiring staffing above and beyond the levels specified herein, the COG may negotiate for and/or assist in securing additional funds to supplement this agreement.

**NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS**

**CITY OF AZTEC**

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

Billy W. Moore, Board Chair

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

Victor C. Snover, Mayor

ATTEST: \_\_\_\_\_

Evan J. Williams, Executive Director

ATTEST: \_\_\_\_\_

Karla Sayler, City Clerk

**NORTHWEST NEW MEXICO COUNCIL OF GOVERNMENTS**

**Board of Directors Appointment Form/FY 2021**

**Member Government:** City of Aztec **Date:** \_\_\_\_\_

1. The governing body of The City of Aztec (hereinafter Member) has designated

\_\_\_\_\_

as its official Representative to the Board of Directors of the Northwest New Mexico Council of Governments (NWNMCOG), the organization established by State Statute as New Mexico Planning & Development District I and by the US Department of Commerce as Economic Development District 1.

2. It is understood that the responsibilities of Board representatives include, but are not necessarily limited to:

- Attendance at four (4) quarterly meetings of the Board of Directors as scheduled and, as needed and feasible, such special meetings as may be called by the Board Chair. Generally, regular meetings are held within the NWNMCOG planning district, rotated county-to-county among Cibola, McKinley and San Juan Counties [one (1) of which is the annual meeting];

*[NOTE: Per the NWNMCOG Articles of Agreement: "Should the representative and/or alternate miss three (3) consecutive meetings, the governing body of the respective member shall be asked to appoint another representative to the Board."]*

- Voting on Board motions and resolutions;
- Serving on and meeting with such committees or task forces as appointed by the Chairman of the Board and/or as volunteered;
- Serving as Board officer as nominated and elected;
- Representing issues, needs and perspectives of the Member within the Council of Governments forum as applicable and appropriate;
- Staying up-to-date on NWNMCOG issues, primarily (a) as represented in the packet of informational materials prepared by staff for each Board agenda and (b) with respect to direct services performed for the Member;
- Communicating with and reporting to the governing body of the Member regarding NWNMCOG issues, priorities and activities; and
- Assisting in advocating for local and regional issues and projects throughout the year.

3. The governing body has also designated \_\_\_\_\_ as Board Alternate, whose responsibilities are to assume the duties and authorities of either Representative, including voting on Board motions and resolutions, in the absence of and as delegated by the Representative.

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

**NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

# Staff Summary Report

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**MEETING DATE:** July 14, 2020  
**AGENDA ITEM:** V. CONSENT AGENDA (D)  
**AGENDA TITLE:** Destruction of Utility Administration

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**ACTION REQUESTED BY:** Utility Administration  
**ACTION REQUESTED:** Approval of Utility Administration Destruction  
**SUMMARY BY:** Delain George

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## **PROJECT DESCRIPTION / FACTS** (Leading Department)

- On May 14, 2019, City Commission approved Resolution 2019-1133, the New Mexico Municipal Records and Retention Schedule.
- The Utility Administration has taken inventory of records ready for destruction using the guidelines outlined under the New Mexico Municipal Records and Retention Schedule.
- If Commission approves the documents to be destroyed, a Commercial Document Shredding Company will be contacted to destroy on-site, the identified records, listed in the supporting document of this summary.

## **TECHNICAL INPUT** (Supporting Departments)

- Documentation providing identification/proof of shredded records will be signed by the Utility Business Office Director and certified and held by the City Clerk.

## **FISCAL INPUT** (If applicable, Finance Department)

- FY2021 expense is budgeted and is expected to be approximately \$200.00.

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**SUPPORT DOCUMENTS:** Document list of records to be destroyed

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Destruction of Utility Administration Records as inventoried on July 8, 2020.

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**Utility Administration and Motor Vehicle Department**  
**List of Records Ready for Destruction**  
**as of July 8, 2020**

RECORD #	RECORD TYPE	DOCUMENT DESCRIPTION	DATE	RETENTION PERIOD	DESTRUCTION	
					METHOD	COMMENTS
18.01.002	General	Administrative Files	FY14	5 years	Shred	
18.01.002	General	Department Budget Work Papers	FY16	3 yrs after close of fiscal year	Shred	Departmental copies
18.01.006	General	Non-Material Records - blank forms etc..	FY19	None	Shred	
18.01.017	General	Park Pavilions Rental, waiver of liability etc...	FY16	3 yrs after close of fiscal year	Shred	
18.01.034	General	Press Releases		Until superseded or obsolete	Shred	Available electronically
18.03.002	Finance	Court Summary Reports/Receipts	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.03.002	Finance	Daily Cash Reports/reconciliation/transactions f	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.03.002	Finance	Utility Billing Registers	FY16	3 years after audit report	Shred	Available electronically
18.03.002	Finance	Utility Payment Stubs/Receipts	FY16	3 yrs after close of fiscal year	Shred	
18.03.002	Finance	Voucher for Utility Assistance Program	FY16	3 yrs after close of fiscal year	Shred	
18.03.005	Finance	Collection files	FY16	3 yrs after audit report	Shred	Available electronically
18.04.026	Community	Special Event Permits, Cert of Ins, Release				
18.04.027	Development	of Liability	FY17	2 yrs after event occurs	Shred	Available electronically
18.06.002	Clerk	Business License/Registration Records	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.06.012	Clerk	Liquor License Records	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.13.005	Public Utility	Meter Reading Files, consumption reports	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.13.009	Public Utility	Customer applications, correspondence	Expired	Until superseded or obsolete	Shred	Available electronically
18.13.012	Public Utility	Utility Maintenance Files reports etc..	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.13.013	Public Utility	Bank Draft applications	Expired	Until superseded or obsolete	Shred	
18.13.013	Public Utility	Budget Billing Applications	FY16	3 yrs after close of fiscal year	Shred	
18.13.013	Public Utility	Customer Payment arrangements	Expired	Until superseded or obsolete	Shred	
18.13.013	Public Utility	LIHEAP reports and correspondence	FY16	3 yrs after close of fiscal year	Shred	
18.13.013	Public Utility	Various Service Files,logs, service requests	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.13.013	Solid Waste	Work Orders/Job Tickets	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.13.014	Public Utility	Listing of Disconnect Notices and Delinquents	FY16	3 yrs after close of fiscal year	Shred	Available electronically
18.13.13	Public Utility	Work Orders	FY16	1 yrs after close of fiscal year	Shred	Available electronically
18.19.001	Housing	Releases/Certifications for tenant eligibility	FY16	3 yrs after close of fiscal year	Shred	Available electronically

# Staff Summary Report

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<b>MEETING DATE:</b>	July 14, 2020
<b>AGENDA ITEM:</b>	V. CONSENT AGENDA (E)
<b>AGENDA TITLE:</b>	Finance Department Record Destruction

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<b>ACTION REQUESTED BY:</b>	Finance Department
<b>ACTION REQUESTED:</b>	Approval of Finance Department Record Destruction
<b>SUMMARY BY:</b>	Kathy Lamb & Amanda Williams

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## PROJECT DESCRIPTION / FACTS

- Resolution 2019-1133 Designating the New Mexico Municipal Records and Retention Schedule was approved on May 14, 2019.
- Prior to the final destruction of any city document, Commission approval must be obtained.
- If approval is obtained the documents will be shredded. The Destruction Form will be signed and held by the City Clerk.

### Documents to be Destroyed

- Destruction of Finance Department records (**information only** – does not require City Commission approval, Resolution 2010-850 Authorizing Destruction of Hard Copy Records Once Digitally Archived, November 23, 2010):
  - FY19 (July 2018 – June 2019) Accounts Payable records – records have been scanned and electronic records will be retained. Paper documents to be destroyed include check stubs with invoices and purchase authorization documentation for all City bank accounts; EFT transmission and authorization.
  - FY19 Bank Reconciliations (July 2018 – June 2019) Bank Statements and reconciliations for bank accounts – records have been scanned and electronic records will be retained. Paper documents to be destroyed
  - 2016 Quarterly Reports (Jan 2016 – Dec 2016) Payroll Quarterly Reports 941 reports, and W2 tax forms – records have been scanned and electronic records will be retained. Paper documents to be destroyed.
  - 2018 4<sup>th</sup> QT Report (Oct 2018 – Dec 2018) Payroll Quarterly Reports 941 reports, and W2 tax forms – records have been scanned and electronic records will be retained. Paper documents to be destroyed.

- FY15-FY18 (July 2014 to July 2017) Bank Statements and reconciliations for MVD Wells Fargo Bank – records have been scanned and electronic records will be retained. Paper documents to be destroyed.
- FY18-FY19 (June 2018 to June 2019) Bank Statements and reconciliations for CDBG Citizens Bank, NMFA Reservoir, MVD Account Citizens Bank, Court Bond Account Citizens Bank – records have been scanned and electronic record will be retained. Paper documents to be destroyed.
- FY13-FY18 (July 2012 to June 2019) Financial Monthly Report Bank Reconciliation, electronic documents retained.
- Budget Workpapers (FY16), electronic documents retained
- Runway 8-26 Reconstruction AIP 3-35-0056-002-2009 - records documenting costs incurred and reimbursed on multiple funding agreements administered by FAA and NM Aviation Division. Documents have been scanned and electronic records will be retained. Paper documents to be destroyed.
- Ruins Rd Pedestrian Bridge F100120 - records documenting costs incurred and reimbursed on multiple funding agreements administered by NMDOT. Documents have been scanned and electronic records will be retained. Paper documents to be destroyed.
- Airport Stormwater Pollution Prevention Plan, June 2009 update
- Airport Action Plan, May 2008 update
- Wastewater Treatment Plant CWSRF009 - records documenting costs incurred and reimbursed on multiple funding agreements administered by NMED. Documents have been scanned and electronic records will be retained. Paper documents to be destroyed.
- Animas Pedestrian Bridge TPE-516-1(42)13 - records documenting costs incurred and reimbursed on multiple funding agreements administered by NMDOT. Documents have been scanned and electronic records will be retained. Paper documents to be destroyed.
- Destruction of the following Finance Department records **requiring** City Commission approval. Records are NOT scanned but have met record retention requirements:
  - Journal Entries (FY16) Journal vouchers for correction of errors of previously posted/recorded transactions – retention period 3 years after close of accounting period

<b>PROCUREMENT</b>
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- None Required; paper shredding service cost estimated at \$200

**FISCAL IMPACTS**

- Due to the volume of paper to be destroyed, the Finance Department will contact a firm specializing in document destruction. Funds were included in the FY21 Finance Department budget specific to this purpose.

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**SUPPORT DOCUMENTS:** None

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve the Destruction of Finance Department Documents

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# Staff Summary Report

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<b>MEETING DATE:</b>	July 14, 2020
<b>AGENDA ITEM:</b>	VIII. BUSINESS (A)
<b>AGENDA TITLE:</b>	Intent to Adopt Ordinance 2020-507: 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>ACTION REQUESTED BY:</b>	City Manager
<b>ACTION REQUESTED:</b>	Approve Intent to Adopt Ordinance 2020-507: 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>SUMMARY BY:</b>	City Staff

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## PROJECT DESCRIPTION / FACTS

The existing Comcast Franchise agreement was approved via Ordinance 2002-285 on May 6<sup>th</sup>, 2003. The current agreement has expired. During the November 12, 2019 Commission meeting, City Commission adopted Ordinance 2019-495 granting a Franchise Agreement to Comcast Cablevision of New Mexico/Pennsylvania, Inc. The agreement was signed by the Mayor and forwarded to Comcast Cablevision for signature. Due to a Federal Communication Commission (FCC) ruling revising the FCC 621 order finalized in early 2020, the City and Comcast Cablevision need to amend the franchise agreement.

In Section 10 – System Description items 10.2 and 10.3 have been removed from the franchise agreement that was approved by the City Commission during the November 12, 2019 meeting to comply with the new FCC directive. The City Attorney and staff have reviewed the new franchise agreement with Comcast.

<https://www.fcc.gov/document/fcc-enforces-franchising-laws-promote-broadband-deployment-0>

<https://docs.fcc.gov/public/attachments/DOC-358839A1.pdf>

The following information has been provided by Erin Mufalleto, External Affairs Manager, Comcast:

In-Kind Contributions Summary: While the 621 Order addresses any in-kind contributions (including but not limited to courtesy services, I-Net agreements, and payments for PEG other than PEG capital), the most common in-kind contributions are courtesy services. An LFA that wants to retain its courtesy accounts must agree to either: (a) have the fair market value of those courtesy accounts deducted from their franchise fee payment, or (b) pay for the services as invoiced by the cable operator.

As to schools, libraries, and public health institutions – continuing to provide services on a courtesy basis after the Third 621 Order may be classified as a “gift” in violation of E-Rate gift prohibitions. Violating the gift rules could disqualify Comcast as an e-rate provider to those facilities and could disqualify those facilities from getting e-rate benefits from any other provider.

621 Order Summary: On August 1, 2019, the Federal Communications Commission (“FCC” or “Commission”), in a 3-2 vote, approved its Third Report and Order, formally titled “In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act” (“Order”). This Order will have a significant impact on communities in respect to their cable franchise benefits and obligations. The Order is the result of a notice and comment proceeding in which numerous local governments, national municipal organizations, cable operators, and cable industry associations participated. The following is a brief summary of the salient issues in the 85-page Order. The underlying premise of the Order is that all in-kind, non-capital cable company contributions to local governments fall within the five percent (5%) franchise fee and therefore must be offset against franchise fee payments. The Order defines “in-kind cable-related contributions” as “...any non-monetary contributions related to the provision of cable services provided by cable operators as a condition or requirement of a local franchise, including but not limited to, free or discounted cable service to public buildings, non-capital costs in support of PEG access, and costs attributable to the construction, maintenance, and service of I-Nets. It does not include the costs of complying with build-out and customer service requirements.”

The Order confirms and restates that so-called “free cable services” to municipal facilities, schools, and public libraries may be offset against franchise fees. It states: “We find that costs attributable to franchise terms that require a cable operator to provide free or discounted cable service to public buildings, including buildings leased by or under control of the franchise authority, are cable-related in-kind contributions that fall within the five percent cap on franchise fees.” (¶26) As with its discussion of I-Nets, the Order concludes that any such services must be offset against franchise fees based on their fair market value.

The FCC outlines the options available to local governments when it comes to these services: “The local franchising authority may wish to either (1) continue to receive the existing free cable service and a monetary payment of five percent minus the fair market value of that service, or (2) discontinue service and receive a monetary payment of five percent, or (3) reduce the free cable service to select municipal buildings and receive a monetary payment of five percent minus the fair market value of the reduced service.” (Fn. 251) The FCC is clearly driving home its position that local governments cannot receive free cable service in addition to franchise fees.

The Order is prospective and may not be applied retroactively. (¶62) For those current franchise agreements that conflict with the Order, the Commission “encourages the parties to negotiate franchise modifications within a reasonable period of time.” *Id.* In footnote 247 to the Order, it concludes that 120 days “should be, in most cases” a reasonable period of time. What happens if the parties cannot agree on changes to the franchise agreement? Here the FCC assumes that any failure to reach agreement will be the fault of the local government: “If a franchise authority refuses to modify any provision of a franchise agreement that is inconsistent with this Order, that provision is subject to preemption under Section 636(c).” (¶62) Section 636(c) states simply that any franchise term that is inconsistent with the Cable Act will be deemed to be preempted. 47 U.S.C. 556(c) While the FCC may believe that this provides clear guidance as to how the Order will be implemented in practice, many questions remain.

Link to full order: <https://docs.fcc.gov/public/attachments/FCC-19-80A1.pdf>

**PROCUREMENT / PURCHASING (if applicable)**

N/a

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

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**SUPPORT DOCUMENTS:** Ordinance 2020-507  
2020 Comcast Franchise Agreement

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***DEPARTMENT'S RECOMMENDED MOTION:*** Move to Approve Intent to Adopt Ordinance 2020-507: 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

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**City of Aztec  
Ordinance 2020-507**

**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 20019 to operate and maintain a cable system in the City of Aztec; and

**WHEREAS:** That agreement has to be modified due to new FCC rules; 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 2020-507 which accepts the attached agreement and 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 \_\_\_\_\_ 2020 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**

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## 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.

## **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.

12.5 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 \_\_\_\_\_, 2020.

**For City of Aztec, New Mexico:**

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

Name: \_\_\_\_\_

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

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

**For Comcast of New Mexico/Pennsylvania, LLC**

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

Name: Richard C. Jennings

Title: Regional Senior Vice President – Cable Management

Date: \_\_\_\_\_, 2020

**Staff Summary Report**

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<b>MEETING DATE:</b>	July 14, 2020
<b>AGENDA ITEM:</b>	VIII. BUSINESS (B)
<b>AGENDA TITLE:</b>	550 Brewing Company, LLC Rent Forgiveness

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<b>ACTION REQUESTED BY:</b>	550 Brewing Company, LLC
<b>ACTION REQUESTED:</b>	Approval
<b>SUMMARY BY:</b>	Steven M. Saavedra – Community Development Director

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**PROJECT DESCRIPTION / FACTS**

The 550 Brewing Company, LLC, is requesting rent forgiveness for the months of April, May, and June 2020. Due to the COVID-19 crisis and the ensuing Public Health Order from the New Mexico Department of Health, the 550 Brewing Company shut down operations on March 13, 2020. The Public Health Order was amended on June 12, 2020, allowing breweries to open at 50-percent occupancy. The 550 Brewing Company resumed operations on June 12, 2020.

- Outstanding rent owed to the City of Aztec \$3,300.00.
- Rent payments have resumed from the 550 Brewing Company, LLC, for the month of July 2020.
- The 550 Brewing Company, LLC, was a recipient of the Paycheck Protection Program (PPP) loan.
- The sale of real property for 119 S. Church Ave & 119 E. Chuska St. is currently pending. The State requires final authorization for the sale of real property.

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<b>SUPPORT DOCUMENTS:</b>	550 Brewing Company, LLC letter NM Public Health Order 3/24/2020 NM Public Health Order 6/12/2020 NM Public Health Order 6/15/2020
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**DEPARTMENT’S RECOMMENDED MOTION:** Motion to approve rent forgiveness for 550 Brewing Company, LLC for the months of April, May, and June 2020.

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550 Brewing Company, LLC  
7 RD 2794  
Aztec, NM 87410

July 05, 2020

Dear Aztec City Commissioners:

I hope all of you and your families are doing well in these crazy times.

As you probably know, we had to completely close our Taproom operation on March 13<sup>th</sup> of this year due to the COVID 19 pandemic. We also had to close inside service at our Pizza restaurant on Main Ave. During the 12 weeks we were required to shut down or had reduced serving capability, our business lost over \$30,000.00 in sales. With the help of the PPP loan we received, we were able to keep payroll levels the same for those who did not opt to claim unemployment benefits so that our employees managed to earn a living during the closure even if they worked less hours.

Regarding rent on the HUB building, we were under the impression that the transfer to the new owners was scheduled to close before the end of March, but due to unforeseen circumstances, that did not happen. We did not hear anything from the City regarding the property until recently. We did pay a full month of rent on the building for March and should have contacted the City officials about a rent forgiveness or reduction on April 1. We are not very knowledgeable about the procedures with the City, but could you please consider forgiveness of the rent for April, May and June (consistent with the 12 weeks we were forced to close in compliance with State Health regulations) or at least a reduction of the rent for that time period. During the closure, we shut down our Cold Room and the beer coolers at that facility and moved all of our product to our restaurant to minimize electric use and with the exception of the lights outside, which are on at night for the benefit of the entire neighborhood we are situated in, and to aid the police when driving by to see any untoward activity on the premises, utilities should have been significantly reduced. During the closure, we also purchased the required supplies and maintained and improved the patio area by sealing and staining the

entrance stairs and ramp, purchased and planted flowers, paid for repair of the outside faucet for watering the plants and cleaned and maintained the entire patio area.

If you need any additional information from us, to make this decision, please feel free to contact me at 505-402-9300.

Respectfully submitted,,

Mike J Paschall

550 Brewing Company, LLC  
7 RD 2794  
Aztec, NM 87410  
505-402-9300



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**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT OF HEALTH  
CABINET SECRETARY KATHYLEEN M. KUNKEL**

**MARCH 24, 2020**

**Public Health Emergency Order Imposing Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; Providing Guidance on those Restrictions; and Requiring a Report from Certain Health Care Providers**

**WHEREAS**, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 (“COVID-19”) that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

**WHEREAS**, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency as a precautionary tool to facilitate preparation and availability of resources to assure that the federal government had appropriate resources to combat the spread of the COVID-19 virus in our nation through its support of state and community-led preparedness and response efforts;

**WHEREAS**, on March 11, 2020, the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

**WHEREAS**, on March 11, 2020, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared in Executive Order 2020-004 (“EO 2020-004”) that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked the All Hazards Emergency Management Act by directing all cabinets, departments and agencies to comply with the directives of the declaration and the further instructions of the Department of Health;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from the COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), the potential for displacements of persons, and potential closures of schools or other places of public gathering;

**WHEREAS**, the United States Centers for Disease Control and Prevention (“CDC”) recommends the use of personal protective equipment (“PPE”)—including gloves, medical masks, goggles or a face shield, gowns, and in some cases respirators (N95 or FFP2 standard or equivalent) and aprons—for patients and health care workers as an essential part of treating and preventing the spread of COVID-19;

**OFFICE OF THE SECRETARY**

1190 St. Francis Dr., Suite N4100 • P.O. Box 26110 • Santa Fe, New Mexico • 87502  
(505) 827-2613 • FAX: (505) 827-2530 • [www.nmhealth.org](http://www.nmhealth.org)



**WHEREAS**, due to delayed deliveries of PPE from the Strategic National Stockpile, the high demand for PPE throughout the United States and globally, and other supply chain interference related to the COVID-19 pandemic, there is both a statewide and national shortage of PPE and the PPE supplies of New Mexico’s hospitals, health care facilities, and first responders are critically low;

**WHEREAS**, local, national, and global health experts predict that the expected continued rise in cases of COVID-19 will strain the capacity and resources of health care providers, including available space and equipment in health care facilities; and

**WHEREAS**, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to “utilize, secure or evacuate health care facilities for public use.” NMSA 1978, § 12-10A-6(A)(1). The Department of Health is also permitted to “regulate or ration health care supplies” if “a public health emergency results in a statewide or regional shortage of health care supplies.” § 12-10A-6(A)(2), (B). This authority permits the Department of Health to “control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies.” § 12-10A-6(B). The Department of Health also has authority to “control and abate the causes of disease, especially epidemics” and to “maintain and enforce rules for the control of conditions of public health importance.” NMSA 1978, § 24-1-3(C) & (Q).

**NOW, THEREFORE, I**, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and through the Public Health Emergency declared in EO 2020-004 and by virtue of the Governor’s direction under her power to “provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized,” NMSA 1978, § 12-10-4(B)(3), do hereby **ORDER** and **DIRECT** as follows:

1. All hospitals and other health care facilities, ambulatory surgical facilities, dental, orthodontic and endodontic offices in the State of New Mexico are prohibited from providing non-essential health care services, procedures, and surgeries.

2. For purposes of this Order, “non-essential health care services, procedures, and surgeries” include those which can be delayed for three (3) months without undue risk to the patient’s health. Examples of criteria to consider in distinguishing between essential and non-essential actions include: (a) threat to a patient’s life; (b) threat of permanent dysfunction of an extremity, including teeth, jaws, and eyes; (c) risk of metastasis or progression of staging; (d) prenatal and postnatal care; and (e) any other factors that will conserve medical resources without creating an undue risk of permanent harm to patients.

3. This Order’s prohibition on non-essential health care services, procedures, and surgeries is not meant to apply to: (a) the provision of emergency medical care or any actions necessary to provide treatment to patients with emergency or urgent medical needs; (b) any surgery or treatment that if not performed would result in a serious condition of a patient worsening (e.g.,

removing a cancerous tumor or a surgery intended to manage an infection); and (c) the full suite of family planning services.

4. The prohibition on non-essential health care services, procedures, and surgeries will take effect on March 27, 2020.

5. Within three (3) days of the date of this Order, each health care provider or facility that is subject to the prohibition on non-essential health care services, procedures, and surgeries shall submit to the New Mexico Department of Health a policy addressing how it will comply with this Order and identifying those procedures that will generally be deemed essential and non-essential.

6. A person who willfully violates this Order may be subject to civil administrative penalties, including fines up to \$5,000 per violation, in addition to other civil or criminal penalties that may be available at law.

**I FURTHER DIRECT** as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.
- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) This Order shall remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

**THIS ORDER** supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

ATTEST:

*Maggie Toulouse Oliver*

MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 24TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

*Kathleen M. Kunkel*

KATHYLEEN M. KUNKEL  
SECRETARY OF THE STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH



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PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT OF HEALTH  
CABINET SECRETARY KATHYLEEN M. KUNKEL

JUNE 12, 2020

**Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, and June 1, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; **all New Mexicans should be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:
  - A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;
  - B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

- C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and
- D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places

3. The May 5, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, and May 27, 2020, Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

### **ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

**WHEREAS**, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 9,200 and confirmed cases in the United States have risen to more than 2 million;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state

government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.**

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;
- d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;

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**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT OF HEALTH  
CABINET SECRETARY KATHYLEEN M. KUNKEL**

**JUNE 15, 2020**

**Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, and June 12, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; **all New Mexicans should be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:
  - A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;
  - B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

**OFFICE OF THE SECRETARY**

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- C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and
- D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places

3. The June 12, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, and May 27, 2020, June 1, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

### **ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

**WHEREAS**, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 9,700 and confirmed cases in the United States have risen to more than 2 million;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state

government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.**

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

- a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;
- b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;
- c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;
- d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;
- e. Farms, ranches, and other food cultivation, processing, or packaging operations;

- f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;
- g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;
- j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;
- k. Media services including television, radio, and newspaper operations;
- l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;
- m. Hardware stores and self-storage facilities;
- n. Laundromats and dry cleaner services;
- o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- p. Funeral homes, crematoriums and cemeteries;

- q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;
  - r. Real estate services including brokers, title companies, and related services;
  - s. Businesses providing mailing and shipping services, including post office boxes;
  - t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;
  - u. “Restaurants” are those operations that generated at least 50% of their sales from dine-in services from the sale of food during the last calendar year. Sales made to customers for off-site consumption such as the sale of growlers, wholesale revenues, and to-go items are excluded from this calculation. “Local breweries” are those businesses licensed pursuant to NMSA 1978, § 60-6A-26.1. Restaurants and local breweries may provide dine-in service, but they may not exceed 50% occupancy of the maximum occupancy of any enclosed space on their premises, as determined by the relevant fire marshal or fire department. Restaurants and local breweries choosing to open must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at tables, and patrons may not consume food or beverages while standing. Restaurants and local breweries must operate in compliance with applicable occupancy restrictions and COVID-Safe Practices (CSPs) for Restaurants” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. Local wineries and distillers may operate but only for carry out service.
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- (2) “Individuals” means natural persons.
  - (3) “Gathering” means any grouping together of individuals in a single connected location.
  - (4) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, or other grouping that brings together five (5) or more individuals in

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(5) “Houses of worship” means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) “Close-contact business” includes barbershops, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services for up to two trainees.

(7) “Recreational facilities” include indoor movie theaters, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, event venues, performance venues, go-kart courses, adult entertainment venues, and other places of indoor recreation or indoor entertainment.

(8) “Bars” are defined as food and beverage service establishments that derived more than 50% of their revenue in the prior calendar year from the sale of alcoholic beverages. Bars must remain closed during the pendency of this Public Health Order.

(9) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. That document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

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(11) “Retail space” means any essential business that sells goods or services directly to consumers or end-users such as grocery stores or hardware stores and includes the essential businesses identified in the categories above: 1(d), 1(l), 1(m), 1(p), and 1(s).

#### **I HEREBY DIRECT AS FOLLOWS:**

- (1) “Except as provided elsewhere in this Order, all “mass gatherings” are hereby prohibited under the powers and authority set forth in the Public Health Act.
- (2) “Houses of worship” may hold services and other functions provided that they comply with the “COVID-Safe Practices (CSPs) for Houses of Worship” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. Further, “houses of worship” may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.
- (3) Essential businesses” may open but must operate in accordance with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers and also any identified occupancy restrictions.
- (4) “Recreational facilities” must remain closed.

- (5) Any business that is not identified as an “essential business” or a “recreational facility” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.
- (6) Businesses identified as a “retail space” may operate provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP’s set out in the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.
- (7) Indoor shopping malls are permitted to operate provided that the total number of persons within the mall at any given time does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department. Further, loitering within the indoor shopping mall is not permitted and food courts must remain closed.
- (8) Gyms and similar exercise facilities may operate at up to 50% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department, but may not conduct group fitness classes.
- (9) Public swimming pools may open but such facilities are limited to lane-swimming and lessons with up to two students only. Play and splash areas shall be closed. Public swimming pools may not exceed 50% of their maximum occupancy.
- (10) If customers are waiting outside of a business, the business must take reasonable measures to ensure that customers maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.
- (11) Bars are not permitted to operate other than for take-out and delivery if otherwise permitted under their applicable licenses.
- (12) “Places of lodging” shall not operate at more than 50% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. All places of lodging should comply with the “COVID-Safe Practices (CSPs) for Hotels, Resorts, & Lodging” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. In the case of vacation rentals, occupancy shall be determined based upon the number properties managed by a property manager.
- (13) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or

exercising. Further, all individuals should comply with the “COVID-Safe Practices (CSPs) for All New Mexicans” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.

- (14) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.
- (15) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.
- (16) Golf courses may open provided that they operate in accordance with the “COVID-Safe Practices (CSPs) for Golf Course” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.”. Restaurants and other golf course concessions must adhere to operative CSP’s.
- (17) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses”.
- (18) State parks may open on a modified basis and subject to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.
- (19) Summer youth programs may operate on a limited basis that complies with the pertinent CSP’s set out in the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.
- (20) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.
- (21) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

**I FURTHER DIRECT** as follows:

- (1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

- (2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.
- (3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.
- (4) This Order shall take effect immediately and remain in effect through June 30, 2020.

**I FURTHER ADVISE the public to take the following preventive precautions:**

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships.

ATTEST:

*Maggie Toulouse Oliver*

MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 15TH DAY OF JUNE 2020

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

*Kathleen M. Kunkel*

KATHYLEEN M. KUNKEL  
SECRETARY OF THE STATE OF  
NEW MEXICO DEPARTMENT OF HEALTH



- f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;
- g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;
- h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;
- i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;
- j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;
- k. Media services including television, radio, and newspaper operations;
- l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;
- m. Hardware stores and self-storage facilities;
- n. Laundromats and dry cleaner services;
- o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;
- p. Funeral homes, crematoriums and cemeteries;

- q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;
  - r. Real estate services including brokers, title companies, and related services;
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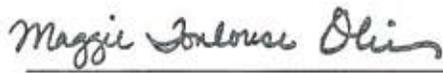
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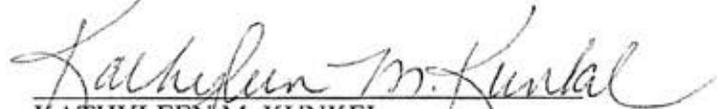
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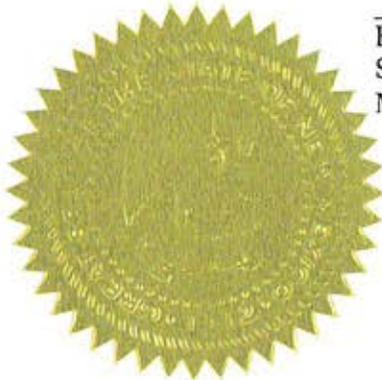
ATTEST:

  
MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 12TH DAY OF JUNE 2020

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

  
KATHYLEEN M. KUNKEL  
SECRETARY OF THE STATE OF NEW  
MEXICO DEPARTMENT OF HEALTH



# Staff Summary Report

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**MEETING DATE:** July 14, 2020  
**AGENDA ITEM:** VIII. BUSINESS (C)  
**AGENDA TITLE:** Best Friends Animal Society – Cat Life Saving Programs

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**ACTION REQUESTED BY:** Tina Roper  
**ACTION REQUESTED:** Approve the Cat Life Saving Program  
**SUMMARY BY:** Tina Roper

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## PROJECT DESCRIPTION / FACTS

Best Friends Animal Society will provide Aztec Animal Shelter with a grant for Cat Life Saving Programs, which would help with the following:

- Community cat program or return to field programs
- Cat adoption promotion
- Cat or kitten intake diversion programs
- Medical programs
- Cat or kitten foster programs
- Shelter medicine expansion program

## PROCUREMENT

- None specific to the agreement. If agreement approved, purchases specific to program will be completed in compliance with City and State purchase requirements.

## FISCAL IMPACTS

- All additional costs will be covered by the Grant
- If agreement approved by City Commission, the FY21 Budget will be updated to include this program for adoption on July 28, 2020.
- Future budgets may be impacted depending on the specific program development for Aztec.

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**SUPPORT DOCUMENTS:** **MOU between Best Friends Animal Society and Aztec Animal Shelter**

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**DEPARTMENT'S RECOMMENDED MOTION:** Move to Approve Best Friends Animal Society – Cat Life Saving Programs

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# Aztec Animal Shelter

## Memorandum of Understanding

### BASIS

Best Friends Animals Society (“Best Friends” or “BFAS”) is a 501(c)(3) nonprofit corporation based in Kanab, Utah, whose mission is **No More Homeless Pets**<sup>®</sup>. Best Friends feels privileged to help save lives by working with network partners and providing financial assistance for specific projects. This document is to clarify in writing the roles that the organizations agree to upon receipt of this one-time financial assistance project.

Aztec Animal Shelter is a 501(c)(3) nonprofit animal welfare charity or a municipal shelter and active Best Friends network partner has been selected to receive funding and specialized training to establish and sustain various forms of Cat Lifesaving Programs.

For the purpose of this memorandum of understanding, “Cat Lifesaving Programs” include but aren’t limited to the following:

- Community Cat Programs or Return-To-Field Programs
- Cat Adoption Promotion or Expansion Programs
- Cat or Kitten Intake Diversion Programs
- Medical Programs (such as Ringworm, URI, or FeLV Adoption Programs)
- Working Cat Programs
- Cat or Kitten Foster Programs
- Feline Shelter Medicine Expansion Programs

The funds shall be disbursed upon receipt of the signed agreement and a copy of the Aztec Animal Shelter’s [IRS Form W9](#).

In consideration of the receipt of this award, Aztec Animal Shelter agrees to the following terms:

### AGREEMENT

#### Financial Assistance Amount and Term

Aztec Animal Shelter:

EIN #: 86-6000105

One-time assistance in the amount of \$59,000.00 (to be paid in two installments: one installment of \$30,000 upon receipt of this signed document and the other installment of \$29,000 on September 1, 2020) to be provided to Aztec Animal Shelter. The second/final installment will be paid upon assessment to ensure that Aztec Animal Shelter is on track to meet overall goals. The funds are to be used in the following way:

- \$52,000 for the implementation and utilization of various lifesaving avenues that result in positive live outcomes for cats (at an approximate cost of \$65 per cat for at least 800 eligible cats)
- \$7,000 for supplies as lined out below

The goal of the implementation of additional Cat Lifesaving Programs is to drastically close the cat lifesaving gap. Best Friends shall support Aztec Animal Shelter in exploring and implementing these additional cat lifesaving programs.

The lifesaving gap is determined by subtracting 10% of the total intakes in the baseline year (year prior to the program) from the total number of animals that died in the shelter in that same baseline year. In the case of Aztec Animal Shelter, total intakes in 2019 were 2,142 so the allowable 10% is 214. Total number of cats that died in 2019 was 1,265; subtracting 214 leaves a cat lifesaving gap of 1,051. Of that gap, we expect these Cat Lifesaving Programs can save at least 800 cats during the 18-month period after this agreement is signed.

### **Best Friends Responsibilities**

As part of this agreement, Best Friends shall:

1. Provide funds to support Aztec Animal Shelter in creating live outcomes for at least 800 cats either via RTF or other cat lifesaving avenues (costs to be covered by the grant, valued at \$52,000).
2. Work with Aztec Animal Shelter management to create and print marketing materials and handouts for the ACOs and client service staff (e.g. door hangers, flyers, etc.). These resources will allow ACOs to discontinue the practice of permanently removing cats from their outdoor homes and instead provide information on how to resolve cat-related issues in the community. These resources will also allow client service staff to mitigate complaints using methods designed to address problems while also reducing the number of cats coming into the shelter (costs to be covered by Best Friends, valued at approximately \$1,000).
3. Provide Aztec Animal Shelter with in-person and/or virtual ongoing training for ACOs, shelter staff and other key stakeholders. In person training may involve Best Friends staff coming to Aztec Animal Shelter and/or the new shelter Cat Lifesaving Coordinator (or equivalent) traveling to another city that is currently running comparable Cat Lifesaving Programs. (If training is in-person, costs to be covered by Best Friends, valued at approximately \$2,000)

4. Fund the purchase of deterrents for ACOs and client service staff which will allow ACOs to discontinue the practice of permanently removing cats from their outdoor homes and instead provide solutions on how to resolve cat-related issues in the community. These resources will also allow client service staff to mitigate complaints using methods designed to address problems while also reducing the number of cats coming into the shelter (costs to be covered by the grant, valued at approximately \$2,750)
5. Fund the purchase of 50 feral dens to be used in the kennels at the shelter as well as for transport and return of RTF cats (costs to be covered by the grant, valued at approximately \$4,250)
6. Provide a monthly check-in call with staff to assist in overcoming challenges and provide strategies/advice on working with other shelter staff, volunteers, or members of the public to resolve issues they may have with implementing the program. Will provide this ongoing training as needed or requested.

### **Aztec Animal Shelter Responsibilities**

Over the course of the one-year Cat Lifesaving mentorship, Aztec Animal Shelter agrees to:

1. Change any current policies or work toward changing any applicable ordinances that impede with the ability of the shelter to institute and sustain cat lifesaving programs (for example, Return-to-Field (RTF) program restrictions such as feeding cats outdoors or licensing requirements for cats).
2. Institute new practices with intake staff that include educating the public about the shelter's approach to cat lifesaving.
3. Implement a shelter intake form for all stray cats that includes the exact address of the location found along with any relevant case information which includes reporting party's contact info, cat description and photo if available; said form will be provided by BFAS.
4. Refrain from testing any program-eligible cats for FIV or FeLV. Exceptions to this are in cases where the cats are sick from an undetermined illness and a euthanasia decision may need to be made.
5. Specific to an RTF program, refuse to impound ear-tipped, program-eligible cats brought to the shelter, and instead help these businesses/individuals facilitate TNR. Should any ear-tipped cats be inadvertently impounded, they shall be promptly returned to their pick-up location.
6. Specific to an RTF program, discontinue renting or loaning out traps to the public unless they are to be used for targeted TNR and refuse to impound eligible cats brought to the shelter by for-profit businesses or individuals who charge a fee for cat removal services.
7. Refrain from accepting cats for impound from residents outside of contracted jurisdictions.

8. Join a monthly check-in call once a month for the first four months and then on an as-needed basis.

Aztec Animal Shelter acknowledges and agrees to work with Best Friends staff to develop a sustainability plan for these cat lifesaving programs to ensure that they will continue as part of Aztec Animal Shelter's standard operating procedures beyond the end date of this grant. Continuation of the programs after the grant period will be the sole financial responsibility of Aztec Animal Shelter. Examples of a sustainability plan might be:

- Executing a financial plan to determine how surgeries, medical treatment, and supplies will continue to be funded;
- produce official standard operating procedures for each department involved in the programs' operations to be reviewed and followed by all necessary staff;
- renewing any contracts with partner veterinary clinics to ensure adequate surgery and medical capacity for program cats;
- create an official job description and/or officially appoint a staff member for the Cat Lifesaving Coordinator position (or equivalent); or
- build out a volunteer network to assist with day-to-day tasks, such as clinic transport, RTF returns, canvassing, data entry, phone calls, and clinic operations

Within the first year of the program and before December 31<sup>st</sup>, 2020, Aztec Animal Shelter shall pursue additional cat lifesaving avenues outside of RTF/TNR. While the specifics of this goal may be built out with input from both Aztec Animal Shelter and Best Friends, examples might be:

- Portalize existing cat kennels to reduce the stress of housing cats inadequately;
- shift to a managed intake model;
- build out a community engagement program (such as Wait til 8) to empower finders of kittens to help find solutions and/or rehome;
- build out a more robust foster program for kittens who are too young for adoption and need placement until old enough for the adoption floor;
- revise euthanasia protocol to allow for longer stays for medical case cats;
- develop more robust protocols that allow for treating URI and ringworm

### **Cat Lifesaving Programs Reporting Requirement**

Aztec Animal Shelter agrees to provide monthly progress reports including cat intake and outcome reports, the use of Cat Lifesaving-specific funds, and examples of successes (including

photos when at all possible). Progress reports are due by the 11<sup>th</sup> of the month for the month prior.

### **Network Program Reporting Requirement**

Aztec Animal Shelter agrees that they will fulfill all reporting requirements necessary for participating in the Best Friends network partner program including monthly reporting in Shelter Animals Count and annual statistics reports as requested. Aztec Animal Shelter understands that this overall data reporting is separate from reports relating to the Cat Lifesaving Programs as explained above.

### **Project Branding Terms and Promotion**

Recipient shall cooperate with Best Friends regarding the promotion of the funded project.

Both parties may issue reports or statements to its members, the media and the public about the funded project. This includes, but is not limited to websites, newsletters, press releases, magazine articles, blogs, and podcasts.

Aztec Animal Shelter shall use its best efforts to provide Best Friends with the opportunity to photograph, video, and audio record events related to the Cat Lifesaving Programs, consistent with Aztec Animal Shelter's policies and procedures for such event(s). Best Friends shall be permitted to use these photographs and video/audio recordings for publicity purposes subject to release.

Aztec Animal Shelter shall reasonably cooperate with Best Friends network staff, volunteer team leaders, and news or magazine writers in the production of such news content. Aztec Animal Shelter agrees to cooperate with Best Friends and facilitate promotion of the Cat Lifesaving Programs through the Best Friends website, newsletters, electronic news distributions, press releases, and other media outlets.

Neither party may use each other's logos, trademarks, or other intellectual property without express permission.

### **Recipient Representations and Warranties**

Aztec Animal Shelter represents and warrants as follows:

- Aztec Animal Shelter is a qualified 501(c)(3) entity or government organization;

- Aztec Animal Shelter is an activated member of the Best Friends network;
- Aztec Animal Shelter acknowledges that its animal welfare activities may be governed by a variety of federal, state, and local laws. Aztec Animal Shelter hereby warrants that it shall use its best efforts to comply with all applicable laws and shall not knowingly violate same;
- The individual signing this agreement on behalf of Aztec Animal Shelter is duly authorized to do so.

### **Financial Assistance Restrictions**

In addition to abiding by the requirement that the funds be used in furtherance of the project described in Aztec Animal Shelter's obligations, Aztec Animal Shelter specifically agrees that no portion of the funds will be used for any of the following: (i) to lobby or otherwise attempt to influence legislation; (ii) to influence outcome of any specific public election or participate or intervene in any political campaign on behalf of any candidate for public office or conduct, directly or indirectly; (iii) to support or oppose any elected official or candidate for public office or on any particular issue.

### **Default and Termination**

Termination by Aztec Animal Shelter. Aztec Animal Shelter may terminate this Agreement upon written notice to Best Friends in the event of the following events of default and where Best Friends fails to cure said default within 14 calendar days after receipt of notice thereof:

- (i) By its actions or statements, Best Friends materially harms Aztec Animal Shelter in its reasonable judgment; or
- (ii) Best Friends files for bankruptcy, or sells, assigns or transfers the majority of its assets to another entity, or ceases to operate as an animal supply and services company.

Termination by Best Friends. Best Friends may terminate this Agreement upon written notice to Aztec Animal Shelter in the event of the following events of default within 14 calendar days after receipt of notice thereof:

- (i) Aztec Animal Shelter fails to carry out their obligations as set out within this Agreement, including, as within the reasonable judgment of Best Friends, failing to carry out the Program in the spirit in which it is entered and with the goal of saving as many animal lives as possible; or
- (ii) By its actions or statements, Aztec Animal Shelter materially harms the reputation of Best Friends, as determined by Best Friends in its reasonable judgment.

Best Friends may immediately terminate this Agreement without penalty or any further obligation upon written notice to Aztec Animal Shelter in the event that Best Friends determines that it lacks the financial ability to continue to support the Program.

In the event that this Agreement is terminated by either party, Best Friends will not be obligated to provide any installment payments that are not yet due.

### **Photo, Video, Digital and Audio Release**

Aztec Animal Shelter grants to Best Friends permission and rights to photograph, video, and audio record any of Aztec Animal Shelter's programs or events for the duration of the project. Aztec Animal Shelter grants to Best Friends the right to indefinitely use such photographs, videos or digital images and voices. This release covers all photos, videos, and audio recordings made by Best Friends or its employees, contractors or agents. Aztec Animal Shelter understands and agrees that these photographs, videos, or digital images and recordings may be used by Best Friends in its sole discretion including for identification purposes, to promote or report about Best Friends events, activities and mission; to raise donations, or for other purposes. This includes, but is not limited to, any royalties, proceeds, or other benefits derived from such images or recordings. This release remains in effect even after funding has been spent.

Aztec Animal Shelter further agrees not to make any claim against Best Friends or its employees, contractors or agents for the use of these photographs, videos or digital image or voice recordings. Aztec Animal Shelter understands this agreement releases and forever discharges Best Friends from any liability Aztec Animal Shelter, its successors, and assigns with respect to personal injury, property damage or other loss or damages that may result as a result from the making and use of photographs, videos or digital image or voice recordings.

### **Non-Disparagement**

Aztec Animal Shelter agrees not to disparage Best Friends during the funded project and for three years following the last disbursement from Best Friends to Aztec Animal Shelter.

### **Release**

Aztec Animal Shelter, its directors, officers, employees, representatives, agents, successors and assigns, agrees never to bring a claim or suit against Best Friends relating to the funded project and its receipt of financial assistance funds. Aztec Animal Shelter agrees Best Friends and its directors, officers, employees, representatives, agents, successors and assigns are not responsible for any of the decisions, plans, guidelines, work, or activities related to or arising from the project or participation in the network. Aztec Animal Shelter releases Best Friends and its directors, founders, employees, officers, agents, representatives, contractors, volunteers, successors and assigns from all liability arising from any work or activities related to the project or participation in the network.

Aztec Animal Shelter understands this agreement discharges Best Friends and its directors, founders, employees, officers, agents, representatives, contractors, volunteers, successors and assigns from any liability to Aztec Animal Shelter with respect to bodily injury, personal injury,

illness, death, property damage or other loss of any kind or nature whatsoever, direct or indirect, known or unknown, that may result as a result of Aztec Animal Shelter's work, participation and activities related to this project and the Best Friends network.

### **Indemnity Agreement**

Aztec Animal Shelter and its directors, officers, agents, employees, representatives, successors and assigns, agree to indemnify and hold Best Friends harmless for all bodily injury, personal injury, illness, death, property damage or other losses of any kind or nature whatsoever, direct or indirect, known or unknown, including attorney's fees and costs of litigation that result to anyone else or any other entity because of actions or omissions related to the funded project. This includes lone acts or omissions by Aztec Animal Shelter as well as the combined acts of Aztec Animal Shelter with others.

### **Survival of Terms**

The intellectual property rights, including the rights to use photos, digital, audio and video materials, agreed to in this agreement are perpetual. The releases and indemnity agreements are perpetual. The Non Disparagement clause survives for three years following the last disbursement from Best Friends to Aztec Animal Shelter.

### **Proprietary Information**

Aztec Animal Shelter acknowledges and agrees that the following constitute "Proprietary Information": any secret or proprietary information relating directly to Best Friends business, including, but not limited to, the Best Friends network and donation process, services, members, donor and volunteer lists, business policies, employment records and policies, operational methods, marketing plans and strategies, business development plans, new personnel acquisition plans, technical processes, designs and design projects, inventions and research programs, trade know-how, trade secrets, specific software, algorithms, computer processing systems, object and source codes, user manuals, systems documentation, and other business and financial affairs of Best Friends. It is not anticipated that Aztec Animal Shelter will have access to Best Friends proprietary information as a result of this Agreement. Nonetheless, Aztec Animal Shelter acknowledges and agrees that in the event Aztec Animal Shelter learns of or comes into possession of any Best Friends proprietary information, Aztec Animal Shelter will notify Best Friends and return said information. Aztec Animal Shelter agrees that it will not use, supply or disclose any Proprietary Information it happens to learn of to any third party.

### **Other**

These contract terms bind the successors and assigns of Aztec Animal Shelter. Each term of this Agreement is material. Aztec Animal Shelter expressly agrees the releases and indemnity agreement are intended to be as broad and inclusive as permitted by law. Aztec Animal Shelter

agrees that in the event that any clause or provision of this agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this agreement. This is the entire agreement between the parties and supersedes any other verbal or written statements, representations, or promises.

This Agreement shall not be construed to constitute any form of partnership, agency or joint venture between Best Friends and Aztec Animal Shelter. Neither party is responsible in any way for the debts of the other or any other party, or any breach of any law, rule, regulation, complaint, grievance, custom, or guideline of the other. Neither party has authority to bind the other to any contractual or other agreements and in no event shall either party represent or hold itself out as acting on behalf of the other party hereto.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. Any disputes arising out of or related to this Agreement will be resolved in a Utah State Court of competent jurisdiction in Kane County, Utah.

**By signing below, Aztec Animal Shelter and Best Friends acknowledge and agree to the terms of this Agreement.**

**Aztec Animal Shelter**

By:

Name:

Title:

Date:

**Best Friends Animal Society**

By:

Name:

Title:

Date:

# Staff Summary Report

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**MEETING DATE:** July 14, 2020  
**AGENDA ITEM:** VIII. BUSINESS (D)  
**AGENDA TITLE:** FY21 Funding Application: Four Corners Economic Development, Inc.

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**ACTION REQUESTED BY:** Four Corners Economic Development, Inc.  
**ACTION REQUESTED:** Determination of Amount of Funding  
**SUMMARY BY:** Kathy Lamb

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## PROJECT DESCRIPTION / FACTS

The FY21 Preliminary Budget includes funds which, historically, have been appropriated to Four Corners Economic Development, Inc.(4CEDs). During the FY20 budget process, the City Commission advised that while funds may be appropriated for the purpose of providing monetary support to 4CEDs, this was not an automatic disbursement to be determined by staff but a request to the City Commission for formal action.

4CEDs has submitted their request for funding for the new fiscal year. The request is not for a specific amount but rather for continued support with the amount to be determined by the City Commission.

The FY21 Preliminary Budget (will be not be formally adopted until the July 28, 2020 meeting and DFA approval not statutorily required until September 1, 2020) includes \$10,000 which could be appropriated to 4CEDs.

Recent funding to 4CEDs:

FY20 (July 2019 – June 2020)	\$ 10,000
FY13 to FY19 (June 2012 – June 2019)	\$140,000 (\$20,000 annually)

## PROCUREMENT / PURCHASING (if applicable)

N/A

## FISCAL INPUT / FINANCE DEPARTMENT (if applicable)

FY21 Preliminary Budget includes \$10,000 which could be appropriated to 4CEDs

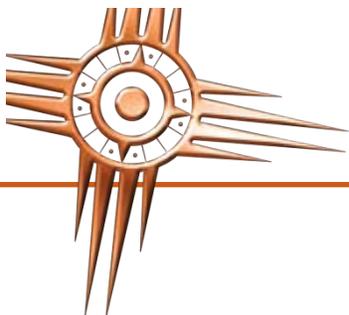
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**SUPPORT DOCUMENTS:** • Four Corners Economic Development Inc. Request

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**RECOMMENDED MOTION:** Move to Approve funding to Four Corners Economic Development, Inc. in the amount of \$ [REDACTED] and request an annual report be presented to the City Commission by (date).

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July 3, 2020

City of Aztec

Attn: Kathy Lamb

201 W Chaco

Aztec, NM 87410

Re: Investment in Four Corners Economic Development, Inc.

Dear Ms. Lamb,

Four Corners Economic Development, Inc. (4CED) embarked on another year of economic development efforts on July 1, 2020, the beginning of our fiscal year. The City of Aztec and its involvement and membership are integral to the mission of 4CED since becoming a member many years ago, and we thank you for your involvement.

4CED, despite the unprecedented events in 2020, continues on many fronts to drive economic activity in San Juan County as well as the Four Corners region. To name a few:

- A Memorandum of Understanding was signed earlier this year by the Navajo Nation and San Juan County to join efforts in bringing a railroad spur to our county. Research and studies continue on this effort.
- Broadband continuity for the Four Corners linking our towns and county to Albuquerque, Salt Lake City, Denver and Phoenix is being driven by our organization.
- 4CED will soon act as the fiscal agent for San Juan County Grower's Market, an alliance of many small farmers across our county.

The City of Aztec's continued support of 4CED's efforts is critical as we move into our next fiscal year. Historically, your city has contributed \$20,000 annually to 4CED. That was reduced for \$10,000 in 2019/2020. We are requesting that the City of Aztec continue to support our efforts again for the 2020/2021 fiscal year.

I am happy to discuss this with your administration at their convenience. I can be reached at the contact information below.

Sincerely,

*Arvin Trujillo*

Arvin Trujillo

CEO, 4CED

505-566-3702

atrujillo@4cornersed.com