

AN ORDINANCE RELATING TO THE NEW MEXICO UNIFORM TRAFFIC ORDINANCE ADOPTED BY THE (CITY/TOWN/VILLAGE) OF Magdalena; ESTABLISHING A PENALTY ASSESSMENT PROGRAM; DEFINING PENALTY ASSESSMENT MISDEMEANORS; ESTABLISHING LISTED SCHEDULE OF PENALTY ASSESSMENTS; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE (CITY/TOWN/VILLAGE) OF Magdalena, NEW MEXICO:

### SECTION 1.

This Ordinance may be cited as the (City/Town/Village) of Magdalena Penalty Assessment Program.

### SECTION 2.

A. As used in the New Mexico Uniform Traffic Ordinance adopted by the (City/Town/Village) of Magdalena, New Mexico, "penalty assessment misdemeanor" means violation of the following-listed sections of the New Mexico Uniform Traffic Ordinance, for which the listed penalty assessment is established:

<u>COMMON NAME OF OFFENSE</u>	<u>SECTION VIOLATED</u>	<u>PENALTY ASSESSMENT</u>
PEDESTRIAN CONTROL SIGNALS	12-5-7	\$ 25.00
FLASHING SIGNALS	12-5-8	25.00
DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS	12-5-10	25.00
SPEED REGULATIONS	12-6-1	
(1) Up to and including ten miles an hour over speed limit		25.00
(2) From eleven up to and including fifteen miles an hour over speed limit		30.00
(3) From sixteen up to and including twenty miles an hour over speed limit		65.00
(4) From twenty-one up to and including twenty- five miles an hour over speed limit		100.00
(5) From twenty-six up to and including thirty miles an hour over the speed limit		125.00

(6) From thirty-one up to and including thirty-five miles an hour over the speed limit		150.00
(7) More than thirty-five miles an hour over the speed limit		200.00
MINIMUM SPEED REGULATIONS	12-6-1.5	25.00
OVERTAKING A VEHICLE ON THE LEFT	12-6-2.3	10.00
LIMITATIONS ON OVERTAKING ON THE LEFT	12-6-2.4	10.00
NO PASSING ZONES & RESTRICTIONS ON PASSING	12-6-2.7	25.00
FOLLOWING TOO CLOSELY	12-6-2.13	25.00
DRIVING ON DIVIDED STREETS	12-6-2.14	25.00
VEHICLE APPROACHING OR ENTERING INTERSECTION	12-6-4.1	25.00
VEHICLES TURNING LEFT AT INTERSECTION	12-6-4.2	25.00
VEHICLE ENTERING STOP OR YIELD INTERSECTION	12-6-4.3	25.00
LIMITATIONS ON TURNING AROUND	12-6-5.5	10.00
STARTING PARKED VEHICLE	12-6-5.7	10.00
TURNING & STOPPING MOVEMENTS AND REQUIRED SIGNALS	12-6-5.8	25.00
STOPPING, STANDING & PARKING	12-6-6	25.00
SPECIAL STOPS REQUIRED	12-6-7	25.00
STOPPING FOR SCHOOL BUS	12-6-7.3	100.00
OPERATORS & CHAUFFEURS MUST BE LICENSED	12-6-12.5	25.00
LIMITATIONS ON BACKING	12-6-12.9	25.00
RESTRICTION ON USE OF VIDEO IN MOTOR VEHICLES	12-6-12.11	25.00
COASTING PROHIBITED	12-6-12.12	25.00
DESTRUCTIVE OR INJURIOUS MATERIAL ON ROADWAY	12-6-13.5	100.00
ANIMALS ON STREET	12-6-13.10	25.00
DRIVING ON MOUNTAIN STREETS	12-6-13.11	25.00
CHILD NOT IN RESTRAINT DEVICE OR SAFETY BELT	12-6-13.12	25.00
MANDATORY USE OF SEAT BELTS	12-6-13.13	25.00
POSSESSION OR CONSUMPTION OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS- FIRST OFFENSE	12-6-13.14	25.00
LITTERING	12-6-13.15	50.00
PEDESTRIAN VIOLATION	12-6-14	10.00

PEDESTRIANS RIGHT-OF-WAY IN CROSSWALKS	12-6-14.2	25.00
PEDESTRIANS TO USE RIGHT HALF OF SIDEWALK	12-6-14.3	25.00
CROSSING AT OTHER THAN CROSSWALKS	12-6-14.4	25.00
PEDESTRIANS ON STREETS	12-6-14.5	25.00
DRIVERS TO EXERCISE DUE CARE	12-6-14.8	25.00
PARKING IN DESIGNATED DISABLED PARKING SPACES	12-9-9	250-500.00
PROHIBITED ACTS	12-10-1.1	25.00
WHEN LIGHTED LAMPS ARE REQUIRED	12-10-1.3	25.00
HEADLAMPS ON VEHICLES	12-10-1.5	25.00
DIMMING OF LIGHTS	12-10-1.6	10.00
TAIL LAMPS	12-10-1.7	25.00
VEHICLES TO BE EQUIPPED WITH REFLECTORS	12-10-1.8	25.00
MUFFLERS, PREVENTION OF NOISE	12-10-1.10	10.00
LAMP OR FLAG ON PROJECTING LOAD	12-10-1.11	10.00
WINDSHIELD MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS; WINDOWS MUST BE TRANSPARENT; EXCEPTIONS	12-10-1.12	25.00
SUN SCREENING MATERIALS ON WINDSHIELDS AND WINDOWS; REQUIREMENTS; VIOLATIONS PENALTY	12-10-1.12A	25.00
DISPLAY OF CURRENT VALID REGISTRATION PLATE	12-10-4	25.00
EVIDENCE OF REGISTRATION TO BE SIGNED AND EXHIBITED ON DEMAND	12-10-5	10.00

- B. The term "penalty assessment misdemeanor" does not include any violation which has caused or contributed to the cause of an accident resulting in injury or death to any person.
- C. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor and no probation imposed upon a suspended or deferred sentence shall exceed ninety days.
- D. The penalty assessment for speeding in violation of Section 12-6-1.2 (4) of the Uniform Traffic Ordinance is twice the penalty assessment established in Subsection A of Section 2 of this ordinance for the equivalent miles per hour over the speed limit.
- E. In addition to the penalty assessment established for each penalty assessment misdemeanor pursuant to this section, there shall be assessed the following fees for each penalty assessment misdemeanor: a twenty dollar (\$20) Corrections Fee; a six dollar (\$6) Court Automation Fee; and a three dollar (\$3) Judicial Education Fee.

### **SECTION 3. PENALTY ASSESSMENT MISDEMEANORS; OPTION; EFFECT**

- A. Unless a warning notice is given, at the time of making an arrest for any penalty assessment misdemeanor, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment. The violator's signature on the penalty assessment notice constitutes an acknowledgement of guilt of the offense stated in the notice, and payment of the prescribed penalty assessment is a complete satisfaction of the violation.
- B. Payment of any penalty assessment must be made by mail to the Municipal Court, Traffic Violations Bureau, City/Town/Village) of Magdalena, New Mexico within \_\_\_\_\_ days from the date of arrest. Payments of penalty assessments are timely if postmarked within the time limits set from the date of arrest. The Traffic Violations Bureau shall issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received is sufficient receipt.
- C. No record of any penalty assessment payment is admissible as evidence in any court in any civil action.

### **SECTION 4. FAILURE TO PAY PENALTY ASSESSMENT**

- A. If a penalty assessment is not paid within \_\_\_\_\_ days from the date of arrest, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if the penalty assessment notice had not been issued. Upon conviction in such prosecution, the court shall impose penalties as provided by the New Mexico Uniform Traffic Ordinance (Section 12-12-1.1), or other law relating to motor vehicles for the particular offense charged, and the scheduled penalty assessments shall not apply.
- B. In addition to the prosecution provided for in Section 4A, it is a misdemeanor for any person who has elected to pay a penalty assessment to failure to do so within \_\_\_\_\_ days from the date of arrest.
- D. The Office of the Municipal Court shall notify the Motor Vehicle Division of the State of New Mexico when a person fails to pay a penalty assessment within the required period of time. The Motor Vehicle Division shall report the notice upon the driver's record and shall not renew the person's license to drive until the Municipal Court notifies the Motor Vehicle Division that the penalty assessment, or its equivalent, as well as any additional penalties imposed are properly disposed of.

### **SECTION 5. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or any portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

### **SECTION 6. ORDINANCES REPEALED**

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 7. EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

**PASSED, APPROVED AND ADOPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

*Revised 7/2018*



P.O. Box 846 • Santa Fe, New Mexico 87504-0846  
Phone (505) 982-5573 • 1-800-432-2036  
FAX No. 1-505-984-1392  
[www.nmml.org](http://www.nmml.org)

Date: July 26, 2018

From: Randy Van Vleck, General Counsel  
Roger Makin, Director of Communications & Publications

To: Municipal Clerks

Subject: 2018 Changes to the Uniform Traffic Ordinance

Attached are the 2018 changes to the 2010 Compilation of the Uniform Traffic Ordinance. There were changes in four of the UTO Articles. We have included a list of the articles that were amended and show the amendments in legislative style (underlined for new material and [---] bracket and strikethrough for deleted material). We have also included the actual replacement pages for your convenience. The replacement pages contain the changes listed on the Changes Sheets. Please note that neither the Index nor the Parallel Tables changed.

**NOTE:** This year we are including a revised local Penalty Assessment Ordinance for adoption. The reason is the Legislature made several changes in the fines associated with the State Penalty Assessment statute. Since the UTO mirrors the State Motor Vehicle Code, we have changed many of the minimum fines in the Local Penalty Assessment Ordinance to reflect the changes to the state statute.

Please keep in mind that these changes and the new Penalty Assessment Ordinance **MUST** be adopted by ordinance for them to become effective. This is the reason we send the amendments to the Municipal Clerk as that is the person who initiates the adoption process. As with any other ordinance, the changes must be posted before the governing body can adopt them.

**Remove pages:**

2017 Cover Page and Preface  
Remove Article V in its entirety  
Remove Article VI pages 45-65  
Remove Article VIII in its entirety  
Remove Article X pages in its entirety

**Replace with new pages (three-hole punched)**

Replace with 2018 Cover Page and Preface  
Replace with new Article V (pages 1-6)  
Replace with new Article VI (pages 45-65)  
Replace with new Article VIII (pages 1-6)  
Replace with new Article X (pages 1-29)

If you have any questions, please do not hesitate to contact us here at the League. Thanks for your cooperation. Please disregard this memo if your municipality has not adopted the Uniform Traffic Ordinance.

**2018 Uniform Traffic Ordinance (2010 Compilation) Amendments by Section**  
(The following sections of the UTO show the 2018 changes for the individual sections. Also included are the replacement pages for each of the Articles that include the changes.)

[—] = deleted

       = additions

**12-5-7            PEDESTRIAN CONTROL SIGNALS.**

A.        Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk" are in place:

(1)       "walk" indicates that pedestrians facing the signal may proceed across the street in the direction of the signal and shall be given the right of way by drivers of all vehicles; and

(2)       "don't walk" indicates that no pedestrian shall start to cross the street in the direction of the signal, but any pedestrian who has partially completed ~~[his]~~ the pedestrian's crossing on the walk signal shall proceed to a sidewalk or safety island while the "don't walk" signal is showing.

B.        A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-106 NMSA 1978)

**12-5-8            FLASHING SIGNALS.**

A.        Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(1)       flashing red (stop signal)--when a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign; or

(2)       flashing yellow (caution signal)--when a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

B.        This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in Sections 12-6-7.5 - 12-6-7.8 of this ordinance.

C.        A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-107 NMSA 1978)

**12-5-10**

**DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS.**

A. No person shall place, maintain, or display upon or in view of any street any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movements of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

B. Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the administrator is hereby empowered to remove the ~~[same]~~ sign, signal marking or device or cause it to be removed without notice.

C. The provisions of this section shall not prohibit the erection of signs upon private property adjacent to streets if the signs give useful directional information and are of a type that cannot be mistaken for official signs. (\*)

D. A person who violates provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-108 NMSA 1978)

**12-6-12.11**

**RESTRICTION ON USE OF [TELEVISION] VIDEO IN MOTOR VEHICLES.**

A. It is unlawful to operate in this municipality any motor vehicle equipped with a ~~[television]~~ video screen, of whatever type, upon which images may be projected or shown, if the screen is within the normal view of the driver of the motor vehicle unless the ~~[television]~~ video screen is solely used as an aid to the driver in the operation of the vehicle.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor.

C. As used in this section "[~~television~~] video screen" does not include closed circuit monitors or computer terminal monitors used by law enforcement agencies in law enforcement motor vehicles. (66-7-358 NMSA 1978)

**12-6-12.12**

**COASTING PROHIBITED.**

A. The driver of any motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-360 NMSA 1978)



**12-6-13.10      ANIMALS ON STREET.**

A. It is unlawful for any person, during the hours of darkness to ride a horse or other animal upon the traveled portion of any street which is normally used by motor vehicles.

B. It is unlawful for any person negligently to permit livestock to wander or graze upon any fenced street at any time or, during the hours of darkness, to drive livestock along or upon any street which is normally used by motor vehicles.

C. Owners of livestock ranging in pastures through which unfenced roadways pass shall not be liable for damages by reason of injury or damage to persons or property occasioned by collisions of vehicles using said roadways and livestock or animals ranging in said pastures unless such owner of livestock is guilty of specific negligence other than allowing [his animals] livestock to range in said pasture.

D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-363 NMSA 1978)

**12-6-13.11      DRIVING ON MOUNTAIN STREETS.**

A. The driver of a motor vehicle traveling through defiles or canyons or on mountain streets shall hold such motor vehicle under control and as near the right-hand edge of the street as reasonably possible.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-359 NMSA 1978)

**12-6-13.15      LITTERING**

A. Littering consists of discarding refuse:

(1) on public property in any manner other than by placing the refuse in a receptacle provided for the purpose by the responsible governmental authorities, or otherwise in accordance with lawful direction; or

(2) on private property not owned or lawfully occupied or controlled by the person, except with the consent of the owner, lessee or occupant [~~thereof. (30-8-4 NMSA 1978)~~]

B. Whoever commits littering is guilty of a petty misdemeanor, and notwithstanding the provisions of Section 31-9-1 NMSA 1978, shall be punished by a fine of fifty dollars (\$50.00). The use of uniform traffic citations is authorized for the enforcement of this section. The court may to the extent permitted by law, as a condition to suspension of any other penalty provided by law, require a person who commits littering to pick up and remove

from any public place or any private property, with prior permission of the legal owner, any litter deposited thereon. (30-8-4 NMSA 1978)

~~[ C. Any jail sentence imposed pursuant to Subsection B of this section may be suspended, in the discretion of the magistrate or judge, upon conditions that the offender assist in litter clean-up in the jurisdiction for a period not to exceed the length of the suspended sentence. (\*) ]~~

#### **12-6-14.2 PEDESTRIANS RIGHT OF WAY IN CROSSWALKS.**

A. When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the street within a crosswalk when the pedestrian is in the crosswalk.

B. ~~[No]~~ A pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

C. Subsection A shall not apply under the conditions stated in Section 12-6-14.4.

D. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the street, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

E. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor (66-7-334 NMSA 1978)

#### **12-6-14.3 PEDESTRIANS TO USE RIGHT HALF OF CROSSWALK.**

A. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

B. A person who violates provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-338 NMSA 1978)

#### **12-6-14.4 CROSSING AT OTHER THAN CROSSWALKS.**

A. ~~[Every]~~ A pedestrian crossing a street at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the street.

B. Any pedestrian crossing a street at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the street.

C. Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

D. No pedestrian shall cross a street intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements. (\*)

E. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-335 NMSA 1978)

#### **12-6-14.5 PEDESTRIANS ON STREETS.**

A. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent street.

B. Where sidewalks are not provided any pedestrian walking along and upon a street shall when practicable walk only on the left side of the street or its shoulder facing traffic which may approach from the opposite direction.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-7-339 NMSA 1978)

#### **12-8-1 EFFECT OF REGULATIONS.**

A. It is a penalty assessment misdemeanor for a person to do any act forbidden or fail to perform any act required by Sections 12-8-1 through 23 or the Uniform Traffic Ordinance.

[A] B. The parent of any child and the guardian of any ward shall not authorize or permit any such child or ward to violate any of the provisions of this ordinance.

[B] C. These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any street or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (66-3-701 NMSA 1978)

#### **12-10-1.1 PROHIBITED ACTS.**

A. Except as otherwise provided in this section, it is a penalty assessment misdemeanor for any person to drive or move, or for the owner to cause or permit to be driven or

moved, on any street, any vehicle, or combination of vehicles, which is in such unsafe condition as to endanger any person, or which does not contain those parts, or is not at all times equipped with such lamps and other equipment, in proper condition and adjustment, as is required by Sections 12-10-1.1 through 12-10-1.51, or which is equipped in any manner that is in violation of those sections, or for any person to do any act forbidden, or fail to perform any act required under those sections.

B. Nothing contained in Sections 12-10-1.1 through 12-10-1.51 shall be construed to prohibit the use of additional parts and accessories on any vehicle which are not inconsistent with the provisions of such sections.

C. The provisions of Sections 12-10-1.1 through 12-10-1.51, with respect to equipment on vehicles, shall not apply to implements of husbandry, road machinery, road rollers or farm tractors, except as made applicable in those sections. (66-3-801 NMSA 1978)

### **12-10-1.3 WHEN LIGHTED LAMPS ARE REQUIRED.**

A. Every vehicle upon a street within this municipality at any time from a half-hour after sunset to a half-hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the street at a distance of five hundred feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.

B. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor (66-3-802 NMSA 1978)

### **12-10-1.5 HEAD LAMPS ON MOTOR VEHICLES.**

A. Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this ordinance.

B. Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this ordinance.

C. Every headlamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than fifty-four inches nor less than twenty inches to be measured as set forth in Section 12-10-1.4B. The provisions of this paragraph shall apply only to new motor vehicles sold after July 1, 1953. (66-3-804 NMSA 1978)

D. For the purposes of Sections 12-10-1.1 through 12-10-1.5 parking lamps shall not be used in lieu of head lamps.(\* )

E. No headlight shall emit a glaring or dazzling light. (66-3-828 NMSA 1978)

F. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-804 NMSA 1978)

#### **12-10-1.7 TAIL LAMPS.**

A. Every motor vehicle, trailer, semi-trailer, and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred feet to the rear; provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. And further, every such above mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after July 1, 1953, shall be equipped with at least two tail lamps mounted on the rear, which when lighted as herein required shall comply with the provisions of this section.

B. Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two inches nor less than twenty inches.

C. Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted. (66-3-805 NMSA 1978)

D. No tail lamp shall emit a glaring or dazzling light. (66-3-828 NMSA 1978)

E. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-805 NMSA 1978)

#### **12-10-1.8 VEHICLES TO BE EQUIPPED WITH REFLECTORS.**

A. Every new motor vehicle hereafter sold and operated upon a street, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least one reflector, meeting the requirements of this section.

B. Every such reflector shall be mounted on the vehicle at a height not less than twenty inches nor more than sixty inches measured as set forth in Section 12-10-1.4B, and shall be of such size and characteristics and so mounted as to be visible at night from all

distances within three hundred feet to fifty feet from such vehicle when directly in front of lawful upper beams of headlamps.

C. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-806 NMSA 1978)

**12-10-1.12 WINDSHIELD MUST BE UNOBSTRUCTED AND EQUIPPED WITH WIPERS; WINDOWS MUST BE TRANSPARENT; EXCEPTIONS.**

A. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rear-most window if the latter is used for driving visibility except as provided in Section 12-10-1.12A. The rear-most window is not necessary for driving visibility where outside rear-view mirrors are attached to the vehicle.

B. The windshield on every motor vehicle, except a motorcycle, shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

C. Every windshield wiper upon a motor vehicle shall be maintained in good working order.

D. A person who violates the provisions of this section is guilty of a penalty assessment misdemeanor. (66-3-846 NMSA 1978)

**12-10-1.12A SUN SCREENING MATERIAL ON WINDSHIELDS AND WINDOWS; REQUIREMENTS; VIOLATION; PENALTY.**

A. A person shall not operate on any street or highway a motor vehicle that is registered or required to be registered in this state if that motor vehicle has a sun screening material on the windshield or any window that does not comply with the requirements of this section.

B. Except as otherwise provided in this section, a sun screening material:

(1) when used in conjunction with the windshield, shall be nonreflective, shall not be red, yellow or amber in color and shall be used only along the top of the windshield, not extending downward beyond the ASI line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield; and

(2) when used in conjunction with the safety glazing materials of the side wings or the side windows located at the immediate right and left of the driver, the side windows behind the driver and the rearmost window shall be nonreflective, shall have a light transmission of not less than twenty percent and shall be used only on the windows of a motor vehicle equipped with one right and one left outside rearview mirror.

C. Each manufacturer shall:

(1) certify to the division that a sun screening material used by that manufacturer is in compliance with the nonreflectivity and light transmission requirements of this section;

(2) provide a label not to exceed one and one-half square inches in size that:

(a) is installed permanently and legibly between the sun screening material and each glazing surface to which it is applied;

(b) contains the manufacturer's name, the date the sun screening material was manufactured and the percentage of light transmission; and

(c) is placed in the left lower corner of each glazing surface when facing the motor vehicle from the outside; and

(3) include instructions with the sun screening material for proper installation, including the affixing of the label specified in this subsection.

D. No person shall:

(1) offer for sale or for use any sun screening material for motor vehicle use not in compliance with this section; or

(2) install any sun screening material on motor vehicles intended for operation on any street or highway without permanently affixing the label specified in subsection C of this section.

E. The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material that is in violation of this section. The affidavit shall be in the possession of the person with such a physical condition, or the person's legal guardian, at all times while being transported in the motor vehicle.

F. The light transmission requirement of this section does not apply to windows behind the driver on truck tractors, buses, recreational vehicles, multipurpose passenger vehicles and motor homes. The provisions of this section shall not apply to motor vehicle glazing which complies with federal motor vehicle standards.

G. The provisions of this section do not apply to motor vehicles that have sun screening material on the windshield or any window prior to July 1, 1997.

H. As used in this section:

(1) "light transmission" means the ration of the amount of total light that passes through a product or material, expressed in percentages, to the amount of total light falling on the product or material;

(2) "manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with motor vehicle glazing materials for the purpose of reducing the effects of the sun;

(3) "nonreflective" means designed to absorb light rather than to reflect it; and

(4) sun screening material means any film material, substance, device or product that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

I. ~~[Any]~~ A person who violates ~~[any]~~ a provision of this section is guilty of a ~~[petty] penalty assessment~~ misdemeanor ~~[and upon conviction shall be punished by a fine of not more than seventy five dollars (\$75.00)]~~. (66-3-846.1 NMSA 1978)



**VILLAGE OF MAGDALENA  
BOARD OF VILLAGE TRUSTEES  
RESOLUTION № 2018-12**

**A RESOLUTION SETTING FEES AND ESTABLISHING PROCESS FOR PAYMENT FOR  
MARSHAL DEPARTMENT SERVICES**

**WHEREAS**, pursuant to NMSA 1978 Section 3-12-2 the powers of a municipality as a body politic and corporate shall be exercised by the governing body; and,

**WHEREAS**, NMSA 1978, Section 3-12-3(A)(3) provides that the governing body may manage and control the finances and all property, real and personal, belonging to the municipality; and,

**WHEREAS**, NMSA 1978, Section 3-17-1 *et seq.* provides that municipalities may adopt those resolutions and ordinances, not inconsistent with statutory or constitutional limitations placed on municipalities, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the municipality and its inhabitants; and,

**WHEREAS**, Article IX, Section 14 of the New Mexico Constitution prohibits municipalities from directly or indirectly lending or pledging its credit or making any donation to or in aid of any person, association or public or private corporation, commonly known as the "Anti-Donation Clause".

**NOW, THEREFORE BE IT RESOLVED**, by the Board of Trustees for the Village of Magdalena that the Village imposes the following fees for Village Marshal services.

1.       Public Records. Fees for public records, i.e. police reports, recordings, etc. are set at the rates established by the Village's current Inspection of Public Records Resolution. Requests for records produced or held by the Marshal will be directed by the Marshal's Office or the person requesting the records to the Village Records Custodian, who will cause the production or assert the privilege of the information, as well as collect fees if copies are requested.
2.       Fingerprints. Fees for a set of fingerprints will be set at five dollars (\$10.00). Payment will be made to the Village Records Custodian who will provide a receipt that must be shown to the Marshal's Department before the service can be provided.
3.       Driving Tests. Fees for driving tests will be set at five dollars (\$20.00). Payment will be made to the Village Records Custodian who will provide a receipt that must be shown to the Marshal's Department before the service can be provided.
4.       Miscellaneous. Should any services be requested that are not specifically

covered, and the Marshal is willing to provide assistance, the Marshal will consult with the Mayor or Clerk to establish a fair rate.

**NOW, THEREFORE BE IT FURTHER RESOLVED**, that Village of Magdalena Resolution 2017-17 is hereby repealed and this Resolution substituted in its place.

**PASSED, APPROVED and ADOPTED** by the Village of Magdalena Board of Trustees on August 13, 2018.

Approved:

\_\_\_\_\_  
Richard Rumpf, Mayor

Attested:

\_\_\_\_\_  
Stephanie Finch, Clerk/Treasurer

**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF  
RESOLUTION NO. 8018-13 OF THE BOARD OF TRUSTEES  
VILLAGE OF MAGDALENA  
AUGUST 13, 2018**

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF SOCORRO            )

The Board of Trustees (the "Governing Body") of the Village of Magdalena (the "Grantee") met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at Village Hall, 108N. Main St, Magdalena, NM, being the meeting place of the Governing Body for the meeting held on the 13<sup>th</sup> day of August at the hour of 6:00 p.m. Upon roll call, the following members and officers were found to be present:

Present:

---

---

---

---

---

Absent:

---

---

Also Present:

---

---

Thereupon, there was officially filed with the Grantee's Clerk a copy of a proposed Resolution in final form, as follows:

**VILLAGE OF MAGDALENA**  
**RESOLUTION NO. 2018-13**

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOCAL GOVERNMENT PLANNING GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), VILLAGE OF MAGDALENA (THE "GRANTEE"), IN THE AMOUNT OF THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) EVIDENCING AN OBLIGATION OF THE GRANTEE TO UTILIZE THE GRANT AMOUNT AND THE LOCAL MATCH AMOUNT] SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF PRELIMINARY ENGINEERING REPORT, AND SOLELY IN THE MANNER DESCRIBED IN THE GRANT AGREEMENT; CERTIFYING THAT THE GRANT AMOUNT, TOGETHER WITH THE LOCAL MATCH AMOUNT AND OTHER FUNDS AVAILABLE TO THE GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of the Resolution unless the context requires otherwise.

WHEREAS, the Grantee is a political subdivision of the State, being a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended; and

WHEREAS, the Grantee is qualified to receive the Planning Grant pursuant to the Finance Authority's Rules Governing the Local Government Planning Fund and NMSA 1978, § 6-21-6.4, as amended; and

WHEREAS, the Governing Body hereby determines that the Project may be financed with amounts granted pursuant to the Grant Agreement, that the Grant Amount, together with the Local Match and other moneys available to the Grantee, is sufficient to complete the Project, and that it is in the best interest of the Grantee and the public it serves that the Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Grant Agreement, accept the Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Grantee acknowledges and understands that the Planning Grant must be expended and a Planning Document must be completed within one (1) year from the Closing Date, or the Grantee will forfeit the ability to draw Grant funds from the Local Government Planning Fund; and

WHEREAS, the Grant Agreement shall not constitute a general obligation of the Grantee or a debt of pledge of the faith and credit of the Grantee, the Finance Authority or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the Grantee's Clerk this Resolution and the form of the Grant Agreement which is incorporated by reference and made a part hereof; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Grant Amount for the purposes described and according to the restrictions set forth in the Grant Agreement; and (ii) the authorization, execution and delivery of the Grant Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF MAGDALENA, NEW MEXICO:

**Section 1. Definitions.** All terms used herein have the same definition as contained in the draft Grant Agreement, dated August 31, 2018.

**Section 2. Ratification.** All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Grantee and officers of the Grantee, directed toward the Project and the execution and delivery of the Grant Agreement, shall be and the same hereby is ratified, approved and confirmed.

**Section 3. Authorization of the Project and the Grant Agreement.** The Project and the method of funding the Project through execution and delivery of the Grant Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Grantee and the public it serves.

**Section 4. Findings.** The Governing Body on behalf of the Grantee hereby declares that it has considered all relevant information and data and hereby makes the following findings:

- A. The Project is needed to address aging sewer infrastructure.
- B. The costs of the Project are beyond the local control and resources of the Grantee.
- C. The Project and the execution and delivery of the Grant Agreement pursuant to the Act to provide funds for the financing of the Project are in the interest of the public health, safety and welfare of the public served by the Grantee.

D. The Grantee will perform (or cause to be performed) the Project with the proceeds of the Planning Grant, and will utilize the Project for the purposes set forth in the Grant Agreement.

E. The Grantee will forfeit the Planning Grant if the Grantee fails to utilize the Grant Amount within one (1) year of the Closing Date.

F. The Local Match is legally available to be applied to the Project.

**Section 5. Grant Agreement—Authorization and Detail.**

A. Authorization. This Resolution has been adopted by the affirmative vote of a majority of a quorum of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Grantee and performing the Project, it is hereby declared necessary that the Grantee execute and deliver the Grant Agreement evidencing the Grantee's acceptance of the Grant Amount of Thirty Seven Thousand Five Hundred Dollars (\$37,500) and the availability of the Local Match in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) to be utilized solely for the Project and solely in the manner and according to the restrictions set forth in the Grant Agreement, the execution and delivery of which are hereby authorized. The Grantee shall use the proceeds of the Grant and the Local Match, to finance the performance of the Project. The Project will be owned by the Grantee and will be utilized by the Grantee as set forth in the Grant Agreement.

B. Detail. The Grant Agreement shall be in substantially the form of the Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of Thirty Seven Thousand Five Hundred Dollars (\$37,500).

**Section 6. Approval of Grant Agreement.** The form of the Grant Agreement as presented at the meeting of the Governing Body at which this Resolution was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Grant Agreement with such changes, insertions, and deletions as may be approved by such individual Authorized Officers, and the Grantee's Clerk is hereby authorized to affix the seal of the Grantee on the Grant Agreement and attest the same. The execution of the Grant Agreement shall be conclusive evidence of such approval.

**Section 7. Disposition of Proceeds; Completion of Acquisition of the Project.**

A. Grant Account. The Grantee hereby consents to creation of the Grant Account by the Finance Authority and approves of the deposit of the Grant Amount into the Grant Account. Until the Completion Date, the money in the Grant Account shall be used and paid out solely for the purpose of the Project in compliance with applicable law and the provisions of the Grant Agreement.

B. Completion of Acquisition of the Project. The Grantee shall proceed to acquire and complete the Project with all due diligence. Upon the Completion Date, the Grantee shall execute a certificate substantially in the form attached as Exhibit "C" to the Grant Agreement stating that acquisition of and payment for the Project have been completed. As soon as practicable and, in any event, not more than sixty (60) days after the Completion Date, any balance remaining in the Grant Account shall be transferred and returned to the Local Government Planning Grant Fund.

C. Finance Authority Not Responsible. The Finance Authority shall in no manner be responsible for the application or disposal by the Grantee or by the officers of the Grantee of the funds derived from the Grant Agreement or of any other funds held by or made available to the Grantee's in connection with use of the Project.

**Section 8. Authorized Officers.** Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Grant Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Grant Agreement, including, but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Grant Agreement.

**Section 9. Amendment of Resolution.** This Resolution after its adoption may be amended without receipt by the Grantee of any additional consideration, but only with the prior written consent of the Finance Authority.

**Section 10. Resolution Irrepealable.** After the Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations of the Grantee under the Grant Agreement shall be fully discharged, as herein provided.

**Section 11. Severability Clause.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

**Section 12. Repealer Clause.** All bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

**Section 13. Effective Date.** Upon due adoption of this Resolution, it shall be recorded in the book of the Grantee kept for that purpose, authenticated by the signatures of the Mayor and Grantee's Clerk of the Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the

effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

*[Remainder of page intentionally left blank.]*



**Section 14. Execution of Agreements.** The Village of Magdalena through its Governing Body agrees to authorize and execute all such agreements with the Finance Authority as are necessary to consummate the Grant contemplated herein and consistent with the terms and conditions attached hereto.

PASSED, APPROVED AND ADOPTED THIS 13<sup>th</sup> DAY OF AUGUST 2018.

VILLAGE OF MAGDALENA

By \_\_\_\_\_  
Richard Rumpf, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Stephanie Finch, Clerk/Treasurer

*[Remainder of page intentionally left blank.]*

Governing Body Member \_\_\_\_\_ then moved adoption of the foregoing Resolution, duly seconded by Governing Body Member \_\_\_\_\_.

The motion to adopt said Resolution, upon being put to a vote was passed and adopted on the following recorded vote:

Those Voting Aye:

---

---

---

---

---

Those Voting Nay:

---

---

Those Absent:

---

---

\_\_\_\_\_ ( ) members of the Governing Body having voted in favor of said motion, the Mayor declared said motion carried and said Resolution adopted, whereupon the Mayor and the Grantee's Clerk signed the Resolution upon the records of the minutes of the Governing Body.

After consideration of matters not relating to the Resolution, the meeting on motion duly made, seconded and carried, was adjourned.

*[Signature page follows.]*

VILLAGE OF MAGDALENA

By \_\_\_\_\_  
Richard Rumpf, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Stephanie Finch, Clerk/Treasurer

*[Remainder of page intentionally left blank.]*

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF SOCORRO            )

I, Stephanie Finch, the duly qualified and acting Clerk/Treasurer of the Village of Magdalena (the "Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of Trustees of the Grantee constituting the Governing Body of the Grantee, had and taken at a duly called regular meeting held at the Village Hall, 108N. Main St, Magdalena, NM, on August 13, 2018 at the hour of 6:00 p.m., insofar as the same relate to the adoption of Resolution No. 2018-02 and the execution and delivery of the proposed Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in the offices of the Grantee. None of the action taken in the said proceedings has been rescinded, repealed or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including, Grantee's Open Meetings Resolution No. 2018-02 dated March 12, 2018, and presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 31<sup>st</sup> day of August, 2018.

VILLAGE OF MAGDALENA

By \_\_\_\_\_  
Stephanie Finch, Clerk/Treasurer

[SEAL]

**EXHIBIT "A"**

**Notice of Meeting**

**\$ 37,500**  
**PLANNING GRANT AGREEMENT**

**dated**  
**August 31, 2018**

**by and between**

**NEW MEXICO FINANCE AUTHORITY**

**and**

**VILLAGE OF MAGDALENA**

## **PLANNING GRANT AGREEMENT**

THIS PLANNING GRANT AGREEMENT (the "Grant agreement"), dated August 31, 2018, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority") and the VILLAGE OF MAGDALENA (the "Grantee").

### **WITNESSETH:**

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State of New Mexico (the "State"), constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978 §§ 6-21-1 through 6-21-31, as amended, (the "New Mexico Finance Authority Act"); and

WHEREAS, NMSA 1978, § 6-21-6.4, as amended, creates the Local Government Planning Fund to be administered by the Finance Authority to make Grants to qualified entities to evaluate and to estimate the costs of implementing the most feasible alternatives for meeting water and/or wastewater public project needs and pay administrative costs of the local government planning fund program; and

WHEREAS, Grantee is a political subdivision of the State, being a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended; and

WHEREAS, the Grantee is qualified to receive the Planning Grant pursuant to the Finance Authority's Rules and NMSA 1978, § 6-21-6.4, as amended; and

WHEREAS, the Grantee has applied to the Finance Authority for Planning Grant (as defined below) funding and has determined that it is in the best interest of the Grantee and the public it serves that the Grantee enter into this Grant Agreement with the Finance Authority and accept a grant in the amount of Thirty Seven Thousand Five Hundred Dollars (\$37,500) from the Finance Authority to carry out the Project, as more fully described in Exhibit "A" attached hereto; and

WHEREAS, the Grantee acknowledges and understands that the Planning Grant must be expended and the Planning Documents must be completed within one (1) year from the Closing Date, or the Grantee will forfeit the ability to draw Grant funds from the Local Government Planning Fund; and

WHEREAS, the Grantee is prepared to perform all its obligations and to observe and obey all restrictions on the use of the Grant set forth in this Grant Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree:

### **ARTICLE I: DEFINITIONS**

As used in this Agreement, including the foregoing recitals, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Agreement Term” means the term of this Grant Agreement as provided under Article III of this Grant Agreement.

“Authorized Officers” means in the case of the Grantee any one or more of the Mayor, Village Manager and Village Clerk thereof, and in the case of the Finance Authority the Chairperson, Vice-Chairperson and Secretary of the Board of Directors and the Chief Executive Officer, or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Closing Date” means the date of execution, delivery and funding of this Grant Agreement.

“Event of Default” means one or more events of default as defined in Article IX of this Grant Agreement.

“Finance Authority” means the New Mexico Finance Authority.

“Force Majeure” means any act of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes, lockouts or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party’s control.

“Governing Body” means the Board of Trustees of the Grantee, or any future governing body of the Grantee.

“Grant or Grant Amount” means the sum of Thirty Seven Thousand Five Hundred Dollars (\$37,500).

“Grant Account” means the account in the name of the Grantee established pursuant to this Grant Agreement and held by the Finance Authority for deposit of the Grant Amount for disbursement to the Grantee for payment of the costs of the Project.

“Grant Agreement” means this grant agreement and any amendments or supplements hereto, including the Exhibits attached hereto.

“Grantee” means Village of Magdalena, Socorro County, New Mexico.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove,” “hereafter” and similar words refer to this entire Grant Agreement and not solely to the particular section or paragraph of this Grant Agreement in which such word is used.



“Local Government Planning Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Local Match” means Twelve Thousand Five Hundred Dollars (\$12,500).

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Planning Document” means a written document in the form of a preliminary engineering report created for the purpose of evaluating and estimating the costs of alternatives to meet the Grantee’s public project needs, namely aging sewer line infrastructure.

“Planning Grant” or “Grant” means the amount provided to the Grantee pursuant to the Grant Agreement for the purpose of funding the Project, and is equal to the Grant Amount.

“Policy” or “Policies” means the New Mexico Finance Authority Local Government Planning Fund Project Management Policies.

“Project” means the preparation of the Planning Document as more particularly described in Exhibit “A” hereto.

“Resolution” means the Grantee’s Resolution No. 2018-13 adopted on August 13, 2018, authorizing the Grantee’s acceptance of the terms and conditions of this Grant Agreement.

“Rules” mean the Rules governing the Local Government Planning Fund as adopted by the Board of Directors of the Finance Authority, as amended and supplemented from time to time.

## **ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 2.1. Representations, Warranties and Covenants of the Grantee.** The Grantee represents, warrants and covenants as follows:

(a) **Binding Nature of Covenants.** All covenants, stipulations, obligations and agreements of the Grantee contained in this Grant Agreement and the Resolution shall be deemed to be the covenants, stipulations, obligations and agreements of the Grantee to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Grantee and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreement shall be transferred by or in accordance with law. Except as otherwise provided in this Grant Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Grantee by the provisions of this Grant Agreement and the Resolution shall be exercised or performed by the Grantee or by such residents, officers, or officials of the Grantee as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Grant Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Grantee or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer executing this Grant Agreement shall be liable personally on this Grant Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Grant Agreement. The Grantee is a political subdivision of the State, being a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended. Pursuant to the laws of the State, as amended and supplemented from time to time, the Grantee is authorized to enter into the transactions contemplated by this Grant Agreement and to carry out its obligations hereunder. The Grantee has duly authorized and approved the execution and delivery of this Grant Agreement and the other documents related to the transaction.

(d) Use of Grant Agreement Proceeds. The Grantee shall apply the proceeds of the Grant solely to the acquisition and completion of the Project, shall not use the Grant proceeds for any other purpose, and shall comply with all applicable ordinances and regulations, if any, and any and all applicable laws relating to the Project. The Grantee shall immediately apply all Grant proceeds disbursed to it toward the Project. The Grantee shall use the Grant proceeds and complete the Planning Document within one (1) year of the Closing Date or shall forfeit the full amount of the Grant.

(e) Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Grantee.

(f) Completion of Project. The Project will consist of the preparation of the Planning Document to address aging sewer line infrastructure and will be completed so as to comply with all applicable ordinances and regulations, if any, and any and all applicable laws, rules, and regulations of the State relating to the acquisition and completion of the Project and to the use of the Grant proceeds. If requested by the Finance Authority, the Grantee will allow the Office of the State Engineer, the New Mexico Environment Department or other appropriate agency of the State, or the Finance Authority to assist with completion of the Project and to review the Project as completed to assure compliance with applicable laws, rules and regulations of the State. The completed Planning Document must be in a form acceptable to and approved by the Finance Authority, in its sole discretion.

(g) Necessity of Project. The completion of the Project under the terms and conditions provided in this Grant Agreement is necessary, convenient and in furtherance of the governmental purposes of the Grantee and is in the best interest of the Grantee and the public it serves.

(h) Legal, Valid and Binding Obligation. The Grantee has taken all required action necessary to authorize the execution and delivery of this Grant Agreement and this Grant Agreement constitutes a legal agreement of the Grantee enforceable in accordance with its terms.

(i) Benefit to Grantee. The Project will at all times be used for the purpose of benefiting the Grantee and the public it serves as a whole.

(j) Grant Amount Does Not Exceed Project Cost. The Grant Amount as provided herein does not exceed the cost of the Project.

(k) No Breach or Default Caused by Grant Agreement. Neither the execution and delivery of this Grant Agreement, nor the fulfillment of or compliance with the terms and conditions in this Grant Agreement, nor the consummation of the transactions contemplated herein conflicts with or results in a breach of any terms, conditions or provisions of, or any restrictions contained in, any agreement or instrument to which the Grantee is a party or by which the Grantee is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(l) Irrevocability of Grant Agreement. The terms of this Grant Agreement shall be irrevocable until the Project has been fully acquired and completed, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Grant Agreement in a manner not permitted or contemplated by the terms hereof.

(m) No Litigation. To the best knowledge of the Grantee, no litigation or proceeding is pending or threatened against the Grantee or any other person affecting the right of the Grantee to execute this Grant Agreement or to comply with its obligations under this Grant Agreement. Neither the execution of this Grant Agreement by the Grantee nor compliance by the Grantee with the obligations hereunder requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(n) Occurrence of Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Grant Agreement, would constitute an Event of Default on the part of the Grantee hereunder.

(o) Grantee's Existence. The Grantee will maintain its legal identity and existence for the Agreement Term, unless another political subdivision by operation of law succeeds to the liabilities, rights, and duties of the Grantee without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(p) Reports to Finance Authority. The Grantee shall report at least semi-annually to the Finance Authority on the status of the Planning Document.

(q) Records. The Grantee shall properly maintain separate project accounts in accordance with generally accepted accounting principles and conduct an annual audit or review of the Grantee's financial records related to the Project.

Local Match. The Local Match is legally available for the Project, has been applied by Grantee solely for the purposes of the Project and sufficient evidence of the Local Match has been provided to the Finance Authority.

**Section 2.2. Representations, Warranties and Covenants of the Finance Authority**. The Finance Authority represents, warrants and covenants as follows:

(a) The Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Grant Agreement and, by proper action, has duly authorized the execution and delivery of this Grant Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of the Finance Authority enforceable in accordance with its terms.

### **ARTICLE III: AGREEMENT TERM**

The Agreement Term shall commence on the Closing Date and shall terminate upon the earliest of the following events: a determination by the Finance Authority that (a) the Grantee is unable to proceed with the Project for the foreseeable future or has failed to commence the Project in a reasonably timely manner, (b) the Grant or any portion thereof is not necessary for the Project (in which case the Grant Amount may be modified by the Finance Authority) or (c) the Grantee has failed to utilize the Planning Grant to complete the Planning Document within one year of the Closing Date.

### **ARTICLE IV: GRANT; APPLICATION OF MONEYS**

On the Closing Date, the Finance Authority shall transfer the amount shown on Exhibit "A" into the Grant Account to be disbursed by the Finance Authority pursuant to Section 6.2 of this Grant Agreement at the direction of the Grantee, as needed by the Grantee to acquire and complete the Project.

### **ARTICLE V: GRANT TO THE GRANTEE**

**Section 5.1. Grant to the Grantee**. The Finance Authority hereby grants and the Grantee hereby accepts an amount equal to the Grant Amount. The Finance Authority shall establish and maintain, on behalf of the Grantee, a Grant Account, which Grant Account shall be kept separate and apart from all other accounts of the Finance Authority. The Grantee hereby pledges to the Finance Authority all its rights, title and interest in the funds held in the Grant Account for the purpose of securing the Grantee's obligations under this Grant Agreement. Funds in the Grant Account shall be disbursed as provided in Sections 6.2 and 6.3 hereof.

**Section 5.2. No General Obligation.** No provision of this Grant Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Grantee within the meaning of any constitutional or statutory debt limitation.

**Section 5.3. Investment of Moneys in Grant Account.** Money on deposit in the Grant Account may be invested by the Finance Authority for the credit of the Local Government Planning Fund.

## **ARTICLE VI: THE PROJECT**

**Section 6.1. Agreement to Acquire and Complete the Project.** The Grantee hereby agrees that in order to effectuate the purposes of this Grant Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire and complete the Project lawfully, efficiently and within one (1) year of the Closing Date.

**Section 6.2. Disbursements from the Grant Account.** So long as no Event of Default shall occur, the Finance Authority shall disburse moneys from the Grant Account, either to the Grantee or to vendors and contractors, as determined by the Finance Authority in its sole discretion, upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Grantee, supported by certification by the Grantee's project architect, engineer, or other such authorized representative of the Grantee acceptable to the Finance Authority that the amount of the disbursement request represents the progress of completion, acquisition or other Project related activities accomplished as of the date of the disbursement request. The Grantee shall provide such records or access to the Project as the Finance Authority, in its sole discretion, may request in connection with the approval of the Grantee's disbursement requests made hereunder. No disbursement from the Grant Account may be made without receipt of evidence of the Local Match.

**Section 6.3. Determination of Eligibility as condition Precedent to Disbursement.** Prior to the disbursement of the Grant Amount or any portion thereof, the Finance Authority shall have determined that the Grantee has met the readiness to proceed requirements established for the Grant by the Finance Authority and no Event of Default shall have occurred. No disbursement shall be made from the Grant Account except upon a determination by the Finance Authority that such disbursement is for payment of Project expenses, and that the disbursement does not exceed any limitation upon the amount payable.

**Section 6.4. Reimbursement for Prior Expenditures.** The Finance Authority, so long as no Event of Default shall occur and upon presentation of the Grantee's disbursement request with such certification and records as are required in accordance with Section 6.2 hereof, may disburse moneys from the Grant Account for reimbursement of Project expenses incurred after the Finance Authority Board of Directors approved the grant on July 27, 2017.

**Section 6.5. Completion of Disbursement of Grant Funds.** Upon completion of disbursement of the Grant Amount, an Authorized Officer of the Grantee shall deliver a certificate of completion, substantially in the form attached to this Grant Agreement as Exhibit

"C", to the Finance Authority stating that, to the best of the Authorized Officer's knowledge the Project has been completed and the entire Grant Amount has been disbursed in accordance with the terms of this Grant Agreement. If any portion of the Grant Amount remains upon the delivery of the certificate of completion, the Finance Authority may, in its sole discretion, modify this Grant Agreement and reduce the amount of the Grant.

## **ARTICLE VII: COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS**

**Section 7.1. Further Assurances and Corrective Instruments.** The Finance Authority and the Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the terms and intention hereof.

**Section 7.2. Finance Authority and Grantee Representatives.** Whenever under the provisions of this Grant Agreement the approval of the Finance Authority or the Grantee is required, or the Grantee or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Grantee by an Authorized Officer of the Finance Authority or the Grantee, as the case may be, and any party hereto shall be authorized to act or rely on any such approval or request.

**Section 7.3. Requirements of Law.** During the Agreement Term, the Grantee shall observe and comply promptly with all applicable federal, State and local laws and regulations affecting the Project, and all current and future orders of all courts and agencies of the State having jurisdiction over the Project and matters related to the Project.

## **ARTICLE VIII: NON-LIABILITY OF FINANCE AUTHORITY FOR ACTS OR OMISSIONS OF THE GRANTEE; INDEMNIFICATION**

**Section 8.1. Non-Liability of Finance Authority.** The Finance Authority shall not be liable in any manner for the Project, Grantee's use of the Grant, the ownership, operation or maintenance of the Project, or any failure to act properly by the owner or operator of the Project.

**Section 8.2. Indemnification of Finance Authority.** The Finance Authority shall not be responsible for any act or omission of the Grantee upon which any claim, by or on behalf of any person, firm, corporation or other legal entity may be made, whether arising from the establishment or modification of the Project or otherwise. To the extent permitted by law, the Grantee shall and hereby agrees to indemnify and save harmless the Finance Authority and its designee, if any, from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition and completion of the Project. In the event of any action or proceeding brought on any such claim, upon notice from the Finance Authority or its designee, Grantee shall defend the Finance Authority and its designee, if any, in any such action or proceeding.

## **ARTICLE IX: EVENTS OF DEFAULT AND REMEDIES**

**Section 9.1. Events of Default Defined.** Any one of the following shall be an Event of Default under this Agreement:

(a) Use of the Grant Amount, or any portion thereof, by the Grantee for purposes other than the Project;

(b) Failure by the Grantee to utilize the Grant proceeds to complete the Project within one (1) year of the Closing Date;

(c) Failure by the Grantee to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Grant Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Grantee by the Finance Authority, unless the Finance Authority shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority, but cannot be cured within the applicable thirty (30) day period, the Finance Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of Force Majeure the Grantee is unable to carry out the agreements on its part herein contained, the Grantee shall not be deemed in default under this paragraph during the continuance of such inability (but Force Majeure shall not excuse any other Event of Default); or

(d) Any warranty, representation or other statement by or on behalf of the Grantee contained in this Grant Agreement or in any instrument furnished in compliance with or in reference to this Grant Agreement is false or misleading in any material respect.

**Section 9.2. Remedies on Default.** Whenever any Event of Default has occurred and is continuing, and subject to Section 9.3 hereof, the Finance Authority may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Grantee in this Grant Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;

(b) Terminate this Grant Agreement;

(c) Cease disbursing any further amounts from the Grant Account;

(d) Demand that the Grantee immediately repay the Grant Amount or any portion thereof if such funds were not utilized in accordance with this Grant Agreement;

(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority; or

(f) Take whatever other action at law or in equity may appear necessary or desirable to enforce any other of its rights hereunder.

The Grantee shall be responsible for reimbursing the Finance Authority for any and all fees and costs incurred in enforcing the terms of this Grant Agreement.

**Section 9.3 Limitations on Remedies.** A judgment requiring repayment of money entered against the Grantee may reach any available funds of the Grantee to the extent permitted by law.

**Section 9.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority to exercise any remedy reserved in this Article IX, it shall not be necessary to give any notice, other than such notice as may be required in this Article IX.

**Section 9.5. Waivers of Events of Default.** The Finance Authority may in its sole discretion waive any Event of Default hereunder and the consequences of such an Event of Default; provided, however, all expenses of the Finance Authority in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority on account of any Event of Default shall have been discontinued or abandoned or determined adversely, then the Finance Authority and the Grantee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

**Section 9.6. No Additional Waiver Implied by One Waiver.** In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **ARTICLE X: MISCELLANEOUS**

**Section 10.1. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:



If to the Grantee, then to:

Village of Magdalena  
Attn.: Mayor  
108 N. Main St.  
Magdalena, New Mexico 87825

And if to the Finance Authority, then to:

New Mexico Finance Authority  
Attn.: Chief Executive Officer  
207 Shelby Street  
Santa Fe, New Mexico 87501

The Grantee and the Finance Authority may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 10.2. Binding Effect.** This Grant Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Grantee and their respective successors and assigns, if any.

**Section 10.3. Amendments.** This Grant Agreement may be amended only with the written consent of the Finance Authority and the Grantee.

**Section 10.4. No Liability of Individual Officers, Directors or Trustees.** No recourse under or upon any obligation, covenant or agreement contained in this Grant Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, or against any officer, employee, director or member of the Grantee, past, present or future, as an individual so long as such individual was acting in good faith and within the scope of his or her duties. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Grantee or of the Finance Authority is hereby expressly waived and released by the Grantee and by the Finance Authority as a condition of and in consideration for the execution of this Agreement.

**Section 10.5. Grantee Compliance.** The Finance Authority shall not be responsible for assuring the Grantee's use of the Grant Amount or the Project for its intended purpose and shall have no obligation to monitor compliance by the Grantee with the provisions of this Grant Agreement.

**Section 10.6. Severability.** In the event that any provision of this Grant Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 10.7. Execution in Counterparts.** This Grant Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.8. Applicable Law.** This Grant Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 10.9. Captions.** The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Grant Agreement.

*[Remainder of page intentionally left blank.]*

*[Signature pages follow.]*

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as authorized by the Finance Authority Board of Directors on July 27, 2017, has executed this Grant Agreement in its corporate name with its corporate seal hereunto affixed and attested by its duly Authorized Officers; and the Grantee has caused this Grant Agreement to be executed in its corporate name and the seal of the Grantee affixed and attested by its duly Authorized Officers. All of the above are effective as of the date first above written.

**NEW MEXICO FINANCE AUTHORITY**

By \_\_\_\_\_  
Chief Executive Officer or Designee

[SEAL]

ATTEST:

By \_\_\_\_\_

Approved for Execution by Officers of the  
New Mexico Finance Authority:

By \_\_\_\_\_  
Daniel C. Opperman, General Counsel

**VILLAGE OF MAGDALENA**

By \_\_\_\_\_  
Richard Rumpf, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Stephanie Finch, Clerk/Treasurer

## **EXHIBIT "A"**

### **TERM SHEET**

<b>Grantee:</b>	<b>VILLAGE OF MAGDALENA</b>
<b>Project Description:</b>	<b>Preparation of a Planning Document consisting of the preliminary engineering report addressing aging sewer line infrastructure.</b>
<b>Total Grant Amount:</b>	<b>Thirty Seven Thousand Five Hundred Dollars (\$37,500).</b>
<b>Local Match:</b>	<b>Twelve Thousand Five Hundred Dollars (\$12,500).</b>
<b>Closing Date:</b>	<b>August 31, 2018</b>

**EXHIBIT "B"**  
**FORM OF REQUISITION**

**RE:** Thirty Seven Thousand Five Hundred Dollars (\$37,500) Planning Grant Agreement (the "Grant Agreement") by and between the New Mexico Finance Authority ("Finance Authority") and the Village of Magdalena ("Grantee"), Finance Authority Grant Number 3769-PG (the "Grant Agreement").

**Closing Date:** August 31, 2018

**TO:** NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse funds from the Grant Account, with regard to the above-referenced Grant Agreement, the following:

**NAME AND ADDRESS OF PAYEE:** \_\_\_\_\_  
\_\_\_\_\_

**AMOUNT OF PAYMENT:** \$ \_\_\_\_\_

**PURPOSE OF PAYMENT:** \_\_\_\_\_  
\_\_\_\_\_

**WIRING INFORMATION**

<b>BANK NAME:</b>	
<b>ACCOUNT NUMBER:</b>	
<b>ROUTING NUMBER:</b>	

Each obligation, item of cost or expense mentioned herein is for the Grant made by the New Mexico Finance Authority pursuant to the Grant Agreement to the Grantee, within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Grant Account held on behalf of the Grantee. All representations contained in the Grant Agreement and the related closing documents remain true and correct and the Grantee is not in breach of any of the covenants contained therein.

Capitalized terms used herein are used as defined or as used in the Grant Agreement.

**DATED:** \_\_\_\_\_

**By:** \_\_\_\_\_  
Authorized Officer of the Grantee

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

## EXHIBIT "C"

### FORM OF CERTIFICATE OF COMPLETION

RE: Thirty Seven Thousand Five Hundred Dollars (\$37,500) Planning Grant Agreement (the "Grant Agreement") by and between the New Mexico Finance Authority ("Finance Authority") and the Village of Magdalena ("Grantee"), Finance Authority Grant Number 3769-PG (the "Grant Agreement").

Closing Date: August 31, 2018

TO: NEW MEXICO FINANCE AUTHORITY

I, \_\_\_\_\_, the \_\_\_\_\_ of  
[Name] [Title or position]

the Grantee, hereby certify as follows:

1. The project described in the Grant Agreement (the "Project") was completed and placed in service by the Grantee on \_\_\_\_\_, 20\_\_.
2. The total cost of the Project was \$ \_\_\_\_\_.
3. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Grant Agreement.

VILLAGE OF MAGDALENA

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

Its: \_\_\_\_\_

\$37,500  
Village of Magdalena  
Planning Grant Agreement  
Finance Authority No. 3769-PG

STATE OF NEW MEXICO )

) ss.

**CERTIFICATE OF GRANTEE**

COUNTY OF SOCORRO )

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Mayor and Clerk of the Village of Magdalena (the "Grantee"), Socorro County, State of New Mexico, that:

Capitalized terms used in this Certificate have the same meanings as defined in Resolution No. 2018-02 adopted by the Governing Body of the Grantee on March 12, 2018 (the "Resolution") in connection with this Planning Grant, unless otherwise defined in this Certificate or the context requires otherwise.

1. The Grantee is a political subdivision of the State, being a legally and regularly created, established, organized and existing incorporated municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended;

2. The resolutions, rules and regulations governing the Project and customer service by the Grantee have been duly adopted and are now in full force and effect;

3. The Authorized Officers and Governing Body of the Grantee were duly and validly elected or appointed and are empowered to act for the Grantee; and

4. The Grantee has all requisite corporate power:

- (a) To perform or cause performance of the Project funded by the Planning Grant and the Local Match;
- (b) To execute and deliver Grant documents, including but not limited to those identified above; and
- (c) To perform all acts required by such Grant documents to be done by the Grantee.

5. All proceedings of the Grantee, its elected and appointed officers, and employees, required or necessary to be taken in connection with the authorization of the actions specified above have been duly taken and all such authorizations are presently in full force and effect.

6. The Resolution and the Grant Agreement have been duly signed and adopted in accordance with all applicable laws and neither has been repealed, rescinded, revoked, modified,

amended or supplemented in any manner except as set forth in the Resolution. The Resolution constitutes valid and sufficient legal authority for the Grantee to carry out and enforce the provisions of the Grant Agreement.

7. No event will result from the execution and delivery of the Grant Agreement that constitutes a default or an Event of Default under either the Grant Agreement or the Resolution, and no Event of Default and no default under the Grant Agreement or the Resolution has occurred and is continuing on the date of this Certificate.

8. The Grantee has duly authorized and approved the consummation by it of all transactions, and has complied with all requirements and satisfied all conditions, which are required by the Grant Agreement to have been authorized, approved, performed or consummated by the Grantee at or prior to the date of this Certificate. The Grantee has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution and the Grant Agreement.

9. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the enforceability of the Grant Agreement or any of the actions required to be taken by the Resolution or the Grant Agreement to the date of this Certificate have been obtained and are in full force and effect.

10. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the completion of the Project have been obtained and are in full force and effect.

11. Neither the Grantee's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Grant Agreement conflicts or will conflict with, or constitute a breach by the Grantee of, or default by the Grantee under any law, court decree or order, governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Grantee is subject or by which it is bound.

12. There is no actual or threatened action, suit, proceeding, inquiry or investigation against the Grantee, at law or in equity, by or before any court, public board or body, nor to the Grantee's knowledge is there any basis therefore, affecting the existence of the Grantee or the titles of its officials to their respective offices, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Grantee, (b) the use of the proceeds of the Grant Agreement for the Project, (c) the validity or enforceability of the Grant Agreement or any proceedings of the Grantee with respect to the Grant Agreement or the Resolution, (d) the execution and delivery of the Grant Agreement or (e) the power of the Grantee to carry out the transactions contemplated by the Grant Agreement or the Resolution.

13. From at least May 1, 2018, to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers and members of the Governing Body of the Grantee:



Richard Rumpf, Mayor

James Nelson, Trustee

Lynda Middleton, Trustee

Donna Dawson, Trustee

Clark Brown, Trustee

Stephanie Finch, Clerk

14. To the best of our knowledge and belief after due investigation, none of the Events of Default referred to in Article IX of the Grant Agreement has occurred.

15. The Grantee has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Grantee contained in the Grant Agreement and in the Resolution are true and correct as of the date of this Certificate.

16. To the best of our knowledge and belief after due investigation, neither the Mayor, the Grantee's Clerk, any member of the Governing Body of the Grantee, nor any other officer, employee or other agent of the Grantee is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

17. Regular meetings of the Grantee's Governing Body and the meeting at which the Resolution was adopted have been held at Village Hall, 108N. Main St, Magdalena, NM, the principal meeting place of the Grantee.

18. The Grantee's Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Grantee's Governing Body in connection with the Grant Agreement. The Open Meetings Act Resolution No. 2018-02 (the "Open Meetings Act Resolution") adopted and approved by the Governing Body on March 12, 2018, establishes notice standards as required by Section 10-15-1, NMSA 1978, as amended and supplemented. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Grant Agreement and Resolution was taken at meetings held in compliance with the Open Meetings Act Resolution.

19. The Mayor and the Grantee's Clerk, on the date of the signing of the Grant Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Grantee authorized to execute the Grant Agreement.

20. This Certificate is for the benefit of the Finance Authority.

21. This Certificate may be executed in counterparts.

WITNESS our signatures and the seal of the Grantee this 31<sup>st</sup> day of August, 2018.

VILLAGE OF MAGDALENA

By \_\_\_\_\_  
Richard Rumpf, Mayor

[SEAL]

ATTEST:

By \_\_\_\_\_  
Stephanie Finch, Clerk/Treasurer

## SPACE LEASE

**THIS SPACE LEASE** (the "Lease") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Village of Magdalena a New Mexico Municipality ("Lessor"), and U.S. Payments, LLC, an Oklahoma Limited Liability Company ("USP").

In consideration of the terms, covenants and conditions hereafter set forth, Lessor shall and does hereby lease to USP the floor space in various business premises of Lessor all as more particularly identified within Exhibit "A" attached hereto and made a part hereof by this reference, to have and to hold the same unto USP during the term hereof in accordance with all of the following terms and provisions. Premises leased hereby may hereafter sometimes collectively or separately be referred to as the "Space." Lessor's business premises wherein Space is located may hereafter sometimes collectively or separately be referred to as Lessor's Buildings. USP shall quietly enjoy all Space without hindrance or molestation by anyone claiming by, through or under Lessor.

1. *Rent.* USP shall pay Lessor rent during the term of this Lease the rent set forth within Exhibit B attached hereto and made a part hereof by this reference.

2. *Use.* USP shall use and occupy Space for the sole purpose of operating therein bill pay kiosks (the "PaySites") pursuant to the provisions hereof. Lessor shall not have nor allow any other bill pay option within any of Lessor's premises anywhere without USP's consent.

3. *Installation and Operation.* During the term hereof, USP may install, maintain and operate PaySites in all Space identified within Exhibit A. Installation of all PaySites shall -- except as to Lessor's obligations hereafter set forth -- be at USP's sole cost and expense. USP will be solely responsible for the operation and maintenance of all of PaySites. Additional Space in other Lessor premises may be added to and brought within the scope of this Lease by supplemental addenda to this Lease as to which the parties may from time to time agree.

4. *Term.* The term of this Lease shall commence on the Effective Date and shall continue for two (2) years. This Lease shall automatically renew on a year to year basis upon expiration of the primary term unless terminated by either party giving the other party written notice of intent not to renew at least thirty (30) days prior to the expiration date of the primary term. USP may terminate this Lease at any time and for any reason and without any penalty or liability (other than accrued rent) by giving the other written notice at least 30 days prior to such termination. In the event that (a) a party shall become insolvent; (b) a party shall make an assignment of its property for the benefit of creditors or shall seek liquidation or reorganization under any insolvency or bankruptcy law; (c) a petition is filed by or against a party under any provision of the United States Bankruptcy Code which is not dismissed or stayed within sixty (60) days from the date of appointment, then the other party may immediately terminate this Lease and pursue all other available remedies at law or in equity.

5. *Requirements regarding Space.*

(a) Lessor shall provide Lessor's business patrons and customers reasonable access to all PaySites during Lessor's normal business hours.

(b) Lessor shall provide USP, and its servicing agents, access to all PaySites during Lessor's normal business hours or, for purposes of servicing, during such commercially reasonable pre-opening and post-closing hours as to which the parties may from time to time agree.

(c) Whenever feasible, all Space shall be situated such that there is an unrestricted view of each PaySite from the front entrance of each of the Lessor's Buildings wherein Space is located.

(d) Lessor shall supply custodial service, including the cleaning of the exterior of the PaySite on the same schedule normally provided for the remainder of Lessor's Building wherein the Space is located. Lessor shall maintain the area surrounding and adjacent to the PaySite in a safe, neat and orderly condition and shall take due care and cautions so as to prevent Lessor's employees, representatives and customers from damaging any PaySite.

(e) Lessor shall provide heat and air conditioning for all Space at a level consistent with other portions of Lessor's Building.

(f) Lessor, at its expense, shall provide electrical services to all PaySites by providing a dedicated 110 amp line to all Space and Lessor shall further provide USP with access to its telephone closet and facilities or similar communications points of demarcation.

(g) USP shall provide for all Space, at USP's sole cost and expense, installation of all required outlets and a communications port, which shall remain the property of Lessor upon the termination hereof.

(h) Lessor shall provide commercially reasonable security measures for each of Lessor's Buildings.

6. *Title and Risk of Loss.* All PaySites shall remain the property of USP and USP shall bear the risk of loss with respect thereto.

7. *Taxes and Liens.* USP shall pay all personal property taxes or similar assessments directly relating to each PaySite as the same become due. Lessor shall at all times keep each PaySite free of all liens and encumbrances and hereby waives any and all claims or liens, including statutory or common law landlord liens, or that may otherwise be imposed, on any PaySite or any of USP's property.

8. *Exclusion of Certain Damages.* USP specifically DISCLAIMS and the parties specifically and explicitly agree that under no circumstances whatsoever shall USP ever be liable to Lessor for any SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PROPERTY DAMAGE, DAMAGE TO OR LOSS OF EQUIPMENT, LOST PROFITS OR REVENUE, COSTS OF REPLACEMENTS AND OTHER ADDITIONAL EXPENSES, EVEN IF USP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES arising in connection with this Lease or the alleged breach of violation hereof, and that any damages recoverable by Lessor as the result of any alleged breach of any provision hereof shall never exceed Rent due hereunder together with actual costs and expenses directly and proximately attributable to USP's failure to comply with any obligation arising hereunder and not otherwise excluded hereby.

9. *Right to Match.* In the event this Lease is terminated for any reason prior to the expiration of the primary or any renewal term, Lessor hereby agrees that following any such

termination, USP shall have and the right to match any *bona fide* third party offer made to Lessor in connection with the proposed use and/or operation in any of the Space of a bill pay option substantially similar to the PaySites or a similar bill pay kiosk, of which Lessor shall promptly notify USP. Such right to match shall last for the period of time that otherwise would have been the remaining portion of the Lease term if the termination had not occurred.

10. *Lawful Contract.* Lessor warrants and represents: (a) that it is a lawful entity duly qualified and in good standing in the state where the Space is located; (b) the execution, delivery and performance of this Lease are all within Lessor's powers, have all been duly authorized, and are not in contravention of law or the terms of Lessor's charter or organizational documents or of any indenture, agreement, or undertaking to which Lessor is a party or by which it is bound; and (c) Lessor has all necessary authority, power, and legal right to enter into and carry out the provisions of this Lease and upon the execution hereof, said Lease shall be the valid and binding obligation of Lessor and shall be fully enforceable in accordance with its terms. Lessor shall defend, indemnify and hold USP harmless from any and all claims, damages, costs, expenses and liabilities of whatsoever nature, arising in connection with any claims of whatsoever nature in any manner in contravention of or asserted to be in contravention of any of the warranties and representations set forth above, including, without limitation, attorneys fees, and court costs.

11. *Trade Secrets & Confidential Information.* The PaySite consists in part of computer programs, procedures, forms, and other related materials which have been acquired, developed by USP or third parties at substantial expense. Lessor acknowledges that the foregoing are trade secrets that are of great value to USP and that disclosure to others of any of the foregoing and other related materials with respect to the PaySite will result in loss and irreparable damage to USP. Lessor therefore agrees that it will not, except as lawfully required, disclose to others any information regarding such trade secrets, programs, procedures, forms and other related materials with respect to any PaySite.

12. *Waste.* USP shall not commit, or suffer to be committed, any waste or any nuisance upon the Leased Property. USP shall not make any material alterations of the buildings or improvements upon the Space except as allowed hereby without obtaining the prior written consent of the Lessor.

13. *Surrender of Premises.* USP will, upon the expiration or termination of this Lease, peaceably yield up the Space to the Lessor. Any alterations made by Tenant shall be and become part of the Space and thenceforth belong to Lessor. The PaySite, and all signage, equipment, trade fixtures, machinery and personal property located or installed upon the Space or Lessor's Building by USP shall be and remain the property of USP and not be considered to be part of the realty or the Space. Provided, however, that all of same shall be removed and the Space and Lessor's Building restored, at USP's sole expense, to its original condition or in as good condition as when the Space was delivered to USP, reasonable and ordinary wear and tear excepted.

14. *Insurance.* Lessor will, during the term at this Lease, insure and keep insured in the name of the Lessor all of Landlord's Buildings wherein Space is located general and public liability damage insurance with limits of at least One Million Dollars (\$1,000,000) in the aggregate. USP shall,

throughout the term of this Lease, maintain public liability and property damage insurance policies with limits of at least One Million Dollars (\$1,000,000) in the aggregate. Each party shall, upon request, provide to the other party commercially reasonable proof of insurance.

15. *Data Security.* USP is responsible for the security of cardholder data in USP's possession or otherwise stored, processed, or transmitted on behalf of a client, or to the extent USP could impact the security of the client's cardholder data environment.

16. *Cash Services. Lessor acknowledges that the PaySites are the exclusive property of USP and all funds received at the PaySites are the exclusive property of USP or other such financial institution as determined by USP.* Lessor agrees that in no way and under no circumstances will Lessor cause or allow any PaySite or any contents thereof or funds therein, or any of such contents or funds removed by Lessor from any PaySite, to become encumbered or otherwise unavailable to USP.

17. *Force Majeure.*

- A. *Liability— Definition.* Except as otherwise provided herein, neither party shall be liable for any delay or performance of, or the inability to perform, any obligation required by this Lease when such delay or inability is caused by a *force majeure* occurrence. *Force majeure*, as used herein shall mean the following: acts of God, wars, governmental or court orders, regulatory or legislative changes by any local, state or federal governmental agency, strikes, work stoppages, or other occurrences not within the control of the party affected thereby.
- B. *Action on Occurrence of Claimed Force Majeure.* Upon the occurrence of a claimed event of *force majeure*, the affected party claiming same shall (i) promptly notify the other party in writing thereof, furnishing a full description of the pertinent circumstances and the basis and rationale of the claimed event of *force majeure*; and (ii) shall remedy to the extent practicable with all reasonable dispatch the cause or causes claimed as preventing it from carrying out this Lease.
- C. *Termination of Lease.* In the event that either party's performance under this Lease is suspended or rendered impracticable by reason of a *force majeure* event for a period in excess of ninety (90) days, either party shall have the right to terminate this Lease, upon ten (10) days written notice, without further obligation.

18. *Relationship of the Parties.* This Lease is entered into by the parties for the sole and express purpose of governing the relationship between them. Nothing herein contained shall be deemed or construed to create a partnership, joint venture or similar relationship. This Lease is not intended to be, nor shall it be construed as, a joint venture, association, partnership, or franchise. No party shall have nor hold itself out as having any right, power or authority to assume, create or incur any expense, liability or obligation, expressed or implied, on behalf of the other party, except as expressly provided herein.

19. *Notices.* All notices or other communications which may be given or which are required to be given by either party to the other and any exercise of a right provided by this Lease shall be effective only if in a dated writing which is either: (i) personally delivered to the officer of the intended recipient

at the office address specified below; or (ii) sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the intended recipient at the office address specified below; or (iii) deposited into the custody of a nationally recognized overnight delivery service such as Federal Express or United Parcel Service, addressed to the intended recipient at the office address specified below. Notices shall be effective on the earlier of the date of: (i) delivery or receipt, or (ii) if notice is by certified or registered mail or overnight delivery service as provided above, on the third day after the date the notice or other communication is mailed or deposited to the custody of a nationally recognized overnight delivery service for delivery. For purposes of this Notice Section, the addresses of the parties for all notices shall be as follows (unless changed by the party whose address is to be changed in accordance with the provisions of this Notices Section):

If to Client:                    **Village of Magdalena**  
  **Attention: Stephanie Finch**  
  **P.O. Box 145**  
  **Magdalena, N. M. 87825**

If to USP:                        **U.S. PAYMENTS, L.L.C.**  
  **Attention: it's President**  
  **1800 S. Baltimore Avenue, 4th Floor**  
  **Tulsa, OK 74119**

20. *Assignment.* Neither this Lease nor any of the rights or obligations under it may be assigned, delegated, sub-licensed or transferred (by operation of law or otherwise) by either party without the prior written consent of the other party except that USP may, in its sole discretion, assign its rights or delegate or subcontract performance of its obligations under this Lease to (i) any subsidiary, affiliate or parent entity of USP and (ii) any purchaser or transferee of substantially all the stock or assets and liabilities of USP.

21. *Disclaimer of Warranties.* **EXCEPT AS OTHERWISE EXPLICITLY SET FORTH HEREIN, USP SPECIFICALLY DISCLAIMS AND MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESSED OR IMPLIED AND THE SAME ARE HEREBY EXCLUDED FROM THE TERMS OF THIS LEASE.**

22. *Dispute Resolution.* The following procedures shall apply to resolution of any dispute arising hereunder.

- A. *Compulsory Mediation.* If a dispute arises out of or relates to this Lease, or any alleged breach hereof, and if the dispute cannot be satisfactorily settled nor resolved by agreement of the parties, it shall be a mandatory, condition precedent to the resort to the arbitration provision hereafter contained (or any other dispute resolution procedure) that the aggrieved party shall first by notice to the other party initiate a mediation. The parties hereto agree in such event to endeavor in good faith to settle any such dispute by a mediation to be held not later than 30 days from initiation and administered by Dispute Resolution Consultants, Inc. or such other private mediation service provider to which the parties may mutually agree. If a party refuses to mediate as required hereby (or fails within 7 days of written demand to mediate to agree

thereto) then the aggrieved party shall be excused from this mandatory, condition precedent and may thereupon immediately initiate arbitration proceedings as hereafter provided.

- B. ***Binding Arbitration.*** If not resolved by mediation, any and all claims, disputes and controversies of every kind and nature between the parties to this Lease, their successors, assigns, or those claiming any rights arising hereunder, shall be determined by binding arbitration as herein provided, including but not limited to: (i) all matters arising hereunder or pertaining to the interpretation or enforcement hereof; (ii) any course of dealing; (iii) the existence, construction, validity, interpretation or meaning of this Lease; (iv) the performance, non-performance, breach, enforcement, operation, continuance or termination under this Lease; (v) all allegations of liability between the Parties hereto or arising hereunder, including all matters arising by virtue of the relationship evidenced by this Lease; and (vi) all allegations of liability, tortious conduct, misrepresentation, concealment, fraud, negligence, etc. The Parties hereby stipulate and agree that the provisions of this section shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any controversy, dispute or claim arbitrable as set forth herein.
- ***Selection of Arbitrator.*** Any arbitration arising hereunder shall be administered by the American Arbitration Association under its Commercial Arbitration Rules (or by such other arbitration provider as to which the parties may mutually agree) and conducted by one disinterested arbitrator selected by the parties, or appointed by the American Arbitration Association. The arbitrator shall be knowledgeable in the area of commercial law. The venue of the arbitration shall be as then agreed by the parties or, absent their agreement, as determined by the arbitrator.
  - ***Discovery Guidelines.*** The arbitrator shall order the parties to exchange copies of non-rebuttal exhibits and copies of witness lists in advance of the arbitration hearing. The arbitrator shall have the power to order one deposition to be taken by each party of persons or representatives designated by the deposing party. The arbitrator, absent the agreement of the parties, shall have no other power to order discovery or depositions. The arbitrator shall be guided by the parties' stated intent to obtain a speedy and just resolution of any dispute.
  - ***Arbitrator's Powers.*** Unless otherwise limited, qualified or otherwise specified herein, the Arbitrator shall have all powers as provided by the Federal Arbitration Act then in force. To prevent irreparable harm, the arbitrator may grant temporary or permanent injunctive or other equitable relief. The arbitrator shall render a reasoned award resolving all issues, including without limitation arbitrability, timeliness, the merits of the controversy, the nature of the relief to be granted, and any other aspect of the matter which the arbitrator deems necessary to bring about a speedy and just resolution. The arbitrator shall not have the power to award, and no party shall seek, an award of punitive or exemplary damages. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The costs of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for the costs of its own experts and evidence, and further provided that the arbitrator may apportion arbitration costs as the Arbitrator deems appropriate and may award the prevailing party its reasonable attorney fees as the arbitrator shall determine.
- C. ***Injunctive Relief.*** The Dispute Resolution provisions of this Lease shall not preclude a party from initiating an action as may be required to prevent irreparable harm, or a Court from



considering such an application or granting, where appropriate, *temporary* injunctive or other equitable relief, but no final determination thereof should be made until the parties have complied (or refused to do so) with the mediation obligations imposed by this Lease and all questions of permanent relief shall be referred for determination by Arbitration as herein provided.

23. *Entire Agreement.* This Lease, together with all Attachments, constitutes the entire agreement between the parties and supersedes all previous agreements, promises, representations, understandings and negotiations between the parties, whether written or oral, with respect to such subject matter.

24. *Modification, Amendment, Supplement or Waiver.* No modification, amendment or supplement to this Lease shall be binding upon the parties hereto unless made in writing and duly signed by an authorized representative of each party hereto. No waiver of any of the provisions of this Lease shall be binding unless reduced to writing, dated and executed by the party sought to be charged therewith. A failure or delay of either party to this Lease to enforce any provision hereof, to exercise any option which is herein provided or to require performance of any provision hereof shall in no way be construed to be a waiver of such provision. Pre-printed terms and conditions in order and acknowledgment documents issued pursuant to this Lease by one party to the other are not binding.

25. *Severability.* In the event a court of competent jurisdiction shall determine that any of the provisions of this Lease are invalid, illegal or unenforceable, the parties shall negotiate in good faith in an attempt to agree on a mutually acceptable valid, legal and enforceable substitute provision consistent with the original intention of the parties hereto. If the parties are unable to agree upon a substitute provision, then either party may terminate this Lease upon ninety (90) days' notice to the other party.

26. *Effective Date.* This Lease shall be effective for all purposes upon the date and year first above written notwithstanding the actual date any party hereto executes this Lease and notwithstanding any other provision, expressed or implied, of this Lease.

27. *Third Party Beneficiaries.* This Lease is made solely and specifically between and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person, firm or entity whatsoever shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Lease as a third party beneficiary or otherwise.

28. *Attorneys' Fees.* In any litigation as may be required to enforce the terms of this Lease the prevailing party shall be entitled to its reasonable attorneys' fees and all costs of such litigation through all trial and appellate levels and post-judgment proceedings.

29. *Time of the Essence.* The parties agree that time shall be of the essence of this Lease.

30. *Attachments.* The terms and conditions of any and all attachments hereto as amended from time-to-time by mutual agreement of the parties or in accordance with the terms of this Lease, are incorporated herein by reference and shall constitute part of this Lease as if fully set forth herein. This Lease shall be construed and interpreted wherever possible to avoid conflict between the provisions hereof

and any attachments hereto provided that, if such conflict shall arise, the provisions of this Lease shall control.

31. *Headings.* The headings in this Lease are for purposes of reference only and shall not in any way limit or otherwise affect the meaning or interpretation of any of the terms hereof.

32. *Counterparts.* This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Signatures submitted electronically shall be deemed to have the same force and effect as original signatures.

33. *Survival.* The following provisions of this Lease shall survive the expiration or termination of this Lease: (i) provisions relating to protection of Confidential Information; (ii) all obligations and liabilities incurred prior to the expiration or termination; and (iii) provisions which by their express terms shall survive the expiration or termination.

34. *Binding Effect.* This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and any permitted assigns.

35. *Compliance with Laws.* Each party will perform its obligations under this Lease in strict compliance with all applicable laws, orders or regulations of all appropriate jurisdictions.

36. *Execution Authority.* Every individual affixing his or her name hereto on behalf of a party warrants and represent that the individual so affixing his or her signature has all necessary and legal authority to do so.

**IN WITNESS WHEREOF**, the parties have caused this Lease to be executed by their duly authorized representatives to be effective on the date hereinabove first mentioned.

**Village of Magdalena “LESSOR”**

**By:** \_\_\_\_\_  
(sign name)

\_\_\_\_\_  
(print name)

**Its** \_\_\_\_\_ **and duly authorized agent**  
(legal title of authorized representative)

**Attest:**

\_\_\_\_\_  
**Stephanie Finch, Clerk/Treasurer**

**U.S. Payments, LLC “USP”**

**By:** \_\_\_\_\_  
(sign name)

\_\_\_\_\_  
**Tim Neece**  
(print name)

**Its** **President** **and duly authorized agent**  
(legal title of authorized representative)

**EXHIBIT A (Space)**

<i>Location DBA Name</i>	<i>Address</i>	<i>Contact</i>	<i>Phone</i>
Village of Magdalena	P.O. Box 145 Magdalena, N. M. 87825	Stephanie Finch	(575) 854-2261

## EXHIBIT B -- Rent

Lessor will provide space for the terminals, communication (WAN or DSL), and manage receipt paper in the stores. USP will provide detailed procedures for store to replace the receipt paper.

<i>Description of Fees Paid to Lessor</i>	<i>Cost/Unit Price</i>
*Transaction fee for payments when no convenience fee is charged.....	\$0.25

### ***Fee to be paid to Lessor:***

Name on Check:

---

Address for Check delivery:

---

---

---



## **LAN Requirements for PaySite™ Kiosk**

### **General Specifications:**

- 1) The kiosk uses Symantec Endpoint Protection and connects daily to the Symantec LiveUpdate servers for updates.
- 2) The kiosk workgroup is labeled USPFRAME.
- 3) The kiosk is setup to automatically update windows. *In the event the kiosk does not have access to the Microsoft Update Website, USP will manually push all critical Windows updates to the kiosk within 7 days of the update release from Microsoft.*

### **Network Requirements - Kiosk to U.S. Payments:**

- 1) The Kiosk requires access to a DNS Server
- 2) The kiosk requires access to the following external websites:

A. <http://www.uspayments.com/> (USP Production Site)

- 216.54.136.202 (port 443)

B. <http://usp.uspayments.com/> (USP Testing Site)

- 216.54.136.204 (port 80)

C. <http://update.microsoft.com> (port 80 and 443)

D. [liveupdate.symantec-liveupdate.com](http://liveupdate.symantec-liveupdate.com) (ports 80 and 443)

E. [liveupdate.symantec.com](http://liveupdate.symantec.com) (ports 80 and 443)

F. [definitions.symantec.com](http://definitions.symantec.com) (ports 80 and 443)

G. <https://secure.logmein.com/>

- 74.201.74.1 - 74.201.75.254
- 216.52.233.1 - 216.52.233.254
- 69.25.20.1 - 69.25.21.254
- 64.94.18.1 - 64.94.18.254
- 77.242.192.1 - 77.242.193.254
- 212.118.234.0 - 212.118.234.254
- 64.74.103.0 - 64.74.103.254
- 64.94.46.0 - 64.94.47.254
- 63.251.46.1 - 63.251.47.254
- 63.251.34.1 - 63.251.34.254
- 117.20.45.1 - 117.20.45.254
- 111.221.57.1 - 111.221.57.254

If there are any questions, please contact Sean Morris, Logistics Manager, via email at [smorris@uspayments.com](mailto:smorris@uspayments.com) or via phone at (918)728-3815.

# **U.S. PAYMENTS**

*Transaction Management Systems*



## ***Network Requirements - U.S. Payments to Kiosk:***

To establish secure, 2-factor authenticated connections to the kiosk network: U.S. Payments uses LogMeIn.com client software.

## ***Kiosk Configuration:***

U.S. Payments requires the following information to configure the kiosk for each location:

- a. IP Address
- b. Subnet Mask
- c. Gateway
- d. DNS Addresses
- e. Global NAT of LAN

Please send this information to [smorris@uspayments.com](mailto:smorris@uspayments.com)

If there are any questions, please contact Sean Morris, Logistics Manager, via email at [smorris@uspayments.com](mailto:smorris@uspayments.com) or via phone at (918)728-3815.

Pioneered.

Patented.

Proven.

U.S. PAYMENTS  
*Proven. Proven. Proven.*





# PaySite Overview

A turn-key solution.

- Service operates on U.S. Payments' (USP) patented Transaction Management System for accurate, timely and secure processing.
- Complete turn-key program.
- USP purchases, operates, and maintains the kiosk network.
- Our kiosk network experienced average uptime greater than 99.5% over the last three years.
- Kiosks can be located in areas strategically important to clients.



## USP Benefits

Reducing costs and  
enhancing service.

- Substantially reduces the cost of receiving in-person payments.
- Eliminates the risk associated with third-party agents handling funds.
- Ability to place machines in branch offices, replace drop boxes with weather-resistant machines, or locate kiosks in retail outlets.
- Network can include dynamic fee options to meet regulatory requirements.
- Enhances payment convenience.

## One System. Multiple Channels.



### THE PAYSITE®

The self-service bill pay kiosk is U.S. Payments' star player; providing real-time posting, an easy payment process, and location convenience.

### HOSTED IVR/CSR

Offering both automated and agent-assisted telephone payments, our hosted phone services provide fast and secure payments.



### WEB PAYMENTS

PaySite Online completes the USP trifecta, equipping customers with a secure and convenient method to pay bills on the Web.

## Reporting

### Real-time Data



Whether clients use only kiosk, or all three payment channels, USP moves fast. The real-time interface provides immediate payment posting, expedited reconciliation, and instant report availability:

- Real-time transaction information.
- Daily reports provide all the details:
  - ▮ customer account number
  - ▮ payment type (cash, ACH, etc.)
  - ▮ payment location
  - ▮ payment time

Client may generate reports through Administrative Console.

## Implementation

Seamless and easy execution.

- ▮ A single interface garners access to each payment method.
- ▮ Typically 60-90 days depending on backend interface.
- ▮ Based on direction from clients, USP recruits retail partners to host the network.
- ▮ Turn-key program minimizes effort of Client.



## Meeting Customers' Needs Inside & Out



U.S. Payments' weatherized PaySite® kiosk model offers customers 24x7 access to cash, check, and card payments via walk-up or drive-thru.



At just 2.33 square feet, the PaySites' compact design requires a small footprint at your office or inside of retail.



## Clients We Serve



## **Memorandum of Understanding (MOU) for West Central Consortium**

---

This Memorandum of Understanding (MOU) is entered into by and between the following entities: Quemado Independent Schools, Magdalena Municipal Schools, Reserve Independent Schools, Magdalena Library, and Reserve Library.

These entities are applying to the Federal Communication Commission (FCC) Schools and Libraries Division E-Rate program as applicant members (herein also called members) of this consortium (Consortium) for funding year FY2019. The purpose of this MOU is to establish the framework through which, if the E-Rate program approves their application, the applicant group (Consortium) will collaborate, articulate and distribute the specific roles and responsibilities of each applicant member in implementing the services requested under E-Rate 470# 1900.....

### **I. Scope of Work**

Each applicant member agrees to participate in the proposed West Central Consortium E-Rate Category 1 project that is set forth in the consortium application for FY 2019 E-Rate funding.

### **II. Lead Applicant and Fiscal Agent**

The Lead Applicant will assume administrative duties in order to comply with E-Rate rules on behalf of the Consortium and will serve as the fiscal agent for the Consortium in the event a grant is awarded. As fiscal agent, Lead Applicant understands that it is responsible for but not limited to the following: contract management, coordinating discounted and non-discounted payments, and being aware of and submitting E-Rate forms as required. The Lead Applicant will ensure that the project is carried out by the Consortium in accordance with E-Rate requirements.

**Lead Applicant and Fiscal Agent responsibilities-**

- E-Rate filing for program participation and compliance
- E-Rate archiving of bid documents, invoices, correspondence, CIPA compliance
- Coordinate Consortium payments to vendors
- Management of Consortium Letters of Agency to maintain E-Rate eligibility

Lead Applicant and fiscal agent is Central Regional Education Co-operative #5 for purposes of signing this MOU.

### **III. Participating MEMBER Responsibilities**

Each participating MEMBER agrees to--

1. Pay its portion of the discounted and non-discounted fees on time.
2. Be aware of and submit any required documentation for E-Rate compliance.
3. Assure site access and other logistical coordination during the duration of the construction process.

### **IV. Joint Responsibilities for Communications and Development of Timelines**

Each member of the Consortium agrees to the following joint responsibilities--

- 1) Within 30 days of Funding Commitment Decision Letter (FCDL) members will convene
  - a. review network design to
    1. Finalize contract terms.
    11. Develop a timeline and assign areas of responsibility.
- 2) Within 30 days of FCDL all members must convene and adopt an agreement for the operation and long-term maintenance of the fiber optic network, including but not limited to the following elements: Governance structure, identifying and articulating E-Rate administrative responsibilities, long-term management of the network, assurance of fiscal accountability, and providing for a network operations center (NOC) services.

### **V. Assurances**

Each member of the Consortium hereby assures and represents that it:

- 1) Agrees to be bound to every statement and assurance made by the Lead Applicant in the application;
- 2) Has all requisite power and authority to execute this MOU;
- 3) Is familiar with the consortium application and is committed to working collaboratively
  - a. to meet the responsibilities specified in this MOU
  - b. to ensure that the proper elements and commitments are in place to provide dependable telecommunications service, support, and delivery to the members of the West Central Consortium, and
  - c. to maintain the integrity of the network;
- 4) Will comply with all E-Rate rules and member responsibilities in the execution of services awarded for successful project completion.

### **VI. Effective Date/Duration/Termination**

This MOU shall be effective beginning with the date of the last signature hereon. If an FCDL is obtained, this MOU shall terminate upon completion of the project as defined by the E-Rate rules. In the event an FCDL is not obtained, this MOU shall terminate and be of no further force or effect.

## **VII. Signatures**

### ***Quemado Independent Schools***

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

### ***Magdalena Municipal Schools***

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

### ***Reserve Independent Schools***

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

### ***Magdalena Library***

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

### ***Reserve Library***

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

### ***Central Region Educational Co-operative #5***

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*





## **West-Central Consortium**

### **08/01/2018 Meeting Agenda:**

- **Introductions**
- **Objectives**
  - a. **Lower Cost**
  - b.
- **Overview of the process**
- **Roles and Responsibilities**
- **Review of the timeline**
- **Potential cost and cost-sharing ideas**
- **Next Tasks:**
  - a. **Letter of Intent**
  - b. **Technical solution**
  - c. **Procurement process**
    - i. **Important dates**

**Consortium Team/Participants:**

**DRAFT****WestCentral Consortium - Matrix Of Responsibilities**

LINE #	TASK	REC	Consortium member	PED	PSFA	E-rate consultant
	<b>Coordination</b>					
1	Schedule meetings					
2	Secure documentation					
3	Task lists					
4	Develop timelines					
5						
6						
	<b>Technical Solution (Cat1 &lt;ISP&gt; &amp; Cat2 &lt;Equipment&gt;)</b>					
7	Survey - current conditions					
8	Identification of need					
9	Evaluation of options					
10	Scope Of Work (SOW) development and validation					
11						
12						
13						
	<b>Procurement</b>					
14	RFP process					
15	Evaluation					
16	Contracting					
17						
	<b>E-rate application</b>					
18	Creation of EPC account					
19	Create Forms (470, 471, 486, 500...)					
20	PIA (Program Integrity Assurance)					
21	Collect / compile pertinent information					
	<b>Project Implementation</b>					
22	Notice to proceed					
23	Progress meetings					
24	Pay applications review / approval					
25	Closeout					
	<b>Account management</b>					
26	Establish Accounts					
27	Manage accounts					
28	Process payments					
29	Accounting / payment responsibilities					
30	Document keeping					
31						
	<b>Contract management</b>					
32	Process payments					
33	Manage required notification					
34	Follow up on payment requests					
35	Follow up on Trouble tickets					
36	Mediate disputes					

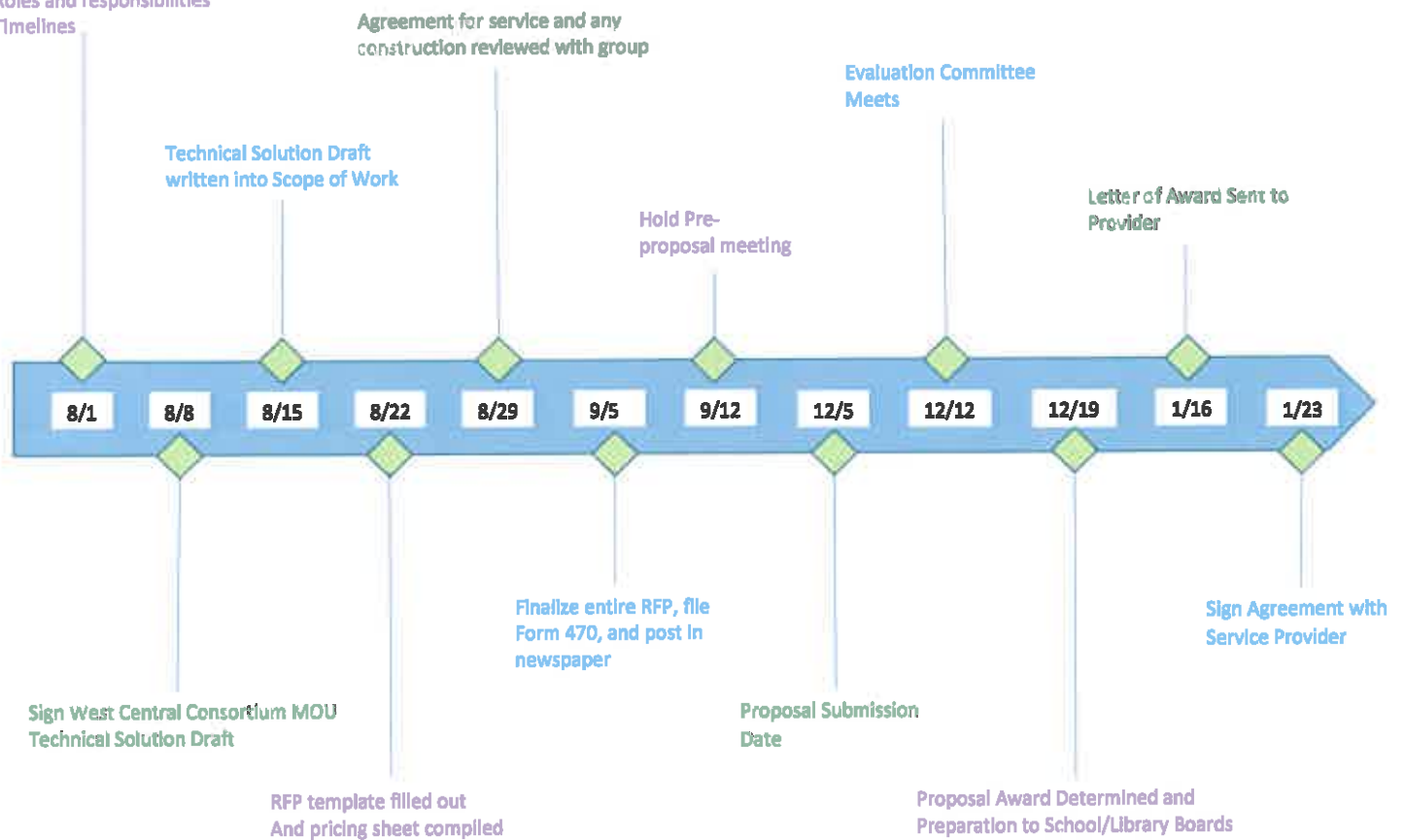
Provide 

Verify 

Assist 

Provide/Verify 

West Central Consortium MOU Draft  
Roles and responsibilities  
Timelines





## West-Central Consortium

08/01/2018 Meeting Agenda:

### NOTES FROM MEETING:

- Introductions  
NEW Attendees: Bill Green (County Manager)
- Objectives
  - a. Lower Cost
  - b. More Bandwidth
  - c. Higher quality service, more reliable
  - d. Optimize connectivity
  - e. Reduce / eliminate duplication of efforts and share resources.
  - f. Help others (county/municipality/residents) in the process
  - g. Discussion between PSFA and County to explore options (parallel procurement etc.)
- Overview of the process
  - ~~a. Add more comments here~~
  - ~~b.a.~~ Consortium development/Procurement/Contracting/E-rate Application/Funding & Implementation/Account&Contract Management.
- Roles and Responsibilities
  - a. See separate document (need to update it)
  - b. Coordination (Primary – PSFA)/Procurement (REC)/E-rate Application (E-rate Central & PED)/Implementation (Vendor, PSFA)/Account management (REC)
  - c. Technical solution: School IT busy. PSFA will assist with options & advantages/disadvantages to move process forward.

- Review of the timeline
  - a. See separate document
  - b. Imperative to move project expeditiously to meet E-rate deadline.
  - c. Approval needed by all parties (boards, superintendents, mayors etc)
- Potential cost and cost-sharing ideas
  - a. TBD – Director Jaramillo (REC): the cost to the entities for REC support is not yet determined.
  - b. Cash flow: E-rate to pay vendor directly. If schools cannot front the non-discounted cost, explore Council approving direct payments for state share. Will depend on proposals received and solution selected.
- Next Tasks:
  - a. Letter of Intent – work to do (Jerry)
  - b. Technical solution – work to do (coordinate with IT team). PSFA to help to identify options available.
  - c. Procurement process
    - i. Important dates – see timeline document
    - ii. Stick with timeline as changes require a lot of effort: re-posting, re-starting of E-rate 28 dates requirement etc...

#### **Consortium Team/Participants:**

It was suggested during the meeting to arrange a “superintendent” meeting. That meeting would also include decision makers for libraries (mayor, county director).

#### **List of Attendees:**

##### **In the room (at PSFA):**

Richard G

Ovidiu V

Shatona (in and out)

Caroline Wolf (E-rate Central)

**Jerry S**

**Maria J**

**? – business office of REC**

**? – business office of REC**

**On the call/GoToMeeting:**

**John Chadwick**

**Bob (Reserve)**

**Jake Mow, Sheena & Dr. Haven (Magdalena)**

**Joy Poole (DCA)**

**Yvonne Magener (Magdalena Library)**

**Andre Giron (Reserve Library)**

**Not present:**

**Tim**

**David Lackey (Superintendent Quemado)**

**?**