



**VILLAGE OF MAGDALENA**  
PO BOX 145, MAGDALENA, NM 87825  
P. 575.854.2261 F. 575.854.2273  
WWW.VILLAGEOFMAGDALENA.COM

**AGENDA**  
**NOTICE OF REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES**  
**MONDAY, MARCH 22, 2021**  
**VILLAGE HALL 108 N. MAIN STREET 5:00 PM**

**PURSUANT TO THE PUBLIC HEALTH ORDER DATED January 29, 2021, LIMITING PUBLIC GATHERINGS IN THE STATE, THE FOLLOWING MEETING ATTENDANCE CAPACITY RULES APPLY:**

**\*\*RED LEVEL - (very high risk): the meeting will not be physically open to the public. Members of the public may attend and listen to the meeting via Zoom or Facebook.**

**\*\*YELLOW LEVEL - (high risk): the meeting is limited to 10 members of the public, inclusive of public officials & employees. Admission will be on a first come first serve basis. All other members of the public may attend and listen to the meeting via Zoom or Facebook.**

**\*\*GREEN LEVEL - (medium risk): the meeting is limited to 20 members of the public, inclusive of public officials & employees. Admission will be on a first come first serve basis. All other members of the public may attend and listen to the meeting via Zoom or Facebook.**

**\*\*TURQUOISE LEVEL - (medium risk): the meeting will be open to the public. Members of the public may also attend and listen to the meeting via Zoom or Facebook.**

**ALL OTHER PUBLIC HEALTH ORDER COVID-19 REQUIREMENTS AND FIRE MARSHAL CAPACITY LIMITS APPLY.**

**MEMBERS OF THE PUBLIC WHO WISH TO ATTEND AND LISTEN TO THE MEETING VIA ZOOM MAY DO SO AT THE FOLLOWING LINK:**

<https://us02web.zoom.us/j/4861155997?pwd=V0V6SERBNVdGNDNPaE1ZdWp1N004UT09>

**Meeting ID: 486 115 5997**

**Passcode: MAGDALENA**

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES
  - a. REGULAR MEETING – MARCH 8, 2021
6. APPROVAL OF CASH BALANCE REPORT
7. APPROVAL OF BILLS
8. MAYOR'S REPORT
9. CLERK'S REPORT
10. BEASLEY, MITCHELL & CO., LLP – PRESENTATION AND DISCUSSION REGARDING APPROVAL OF FISCAL YEAR 2020 AUDIT
11. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION NO. 2021-04, ACCEPTANCE AND APPROVAL OF THE FISCAL YEAR 2020 AUDIT

12. MAGDALENA CHAMBER OF COMMERCE - DISCUSSION & POSSIBLE DECISION REGARDING REQUEST FOR LODGER'S TAX FUNDING
13. PUBLIC HEARING – DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF ORDINANCE NO. 2021-01, AN ORDINANCE ESTABLISHING A JOINT UTILITY SERVICE; ESTABLISHING A VILLAGE SERVICE FOR THE COLLECTION AND DISPOSAL OF TRASH; AMENDING ALL PREVIOUS ORDINANCES RELATING TO WATER AND SEWER SERVICE; PROVIDING FOR THE IMPOSITION AND COLLECTION OF FEES, CONNECTION CHARGES, UTILITY RATES; DEFINING APPLICATION AND SERVICE POLICIES; AND PRESCRIPTING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS
14. FINAL CONSIDERATION - DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF ORDINANCE NO. 2021-01, AN ORDINANCE ESTABLISHING A JOINT UTILITY SERVICE; ESTABLISHING A VILLAGE SERVICE FOR THE COLLECTION AND DISPOSAL OF TRASH; AMENDING ALL PREVIOUS ORDINANCES RELATING TO WATER AND SEWER SERVICE; PROVIDING FOR THE IMPOSITION AND COLLECTION OF FEES, CONNECTION CHARGES, UTILITY RATES; DEFINING APPLICATION AND SERVICE POLICIES; AND PRESCRIPTING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS
15. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL TO APPLY FOR FY2021-2022 LOCAL GOVERNMENT ROAD FUND
16. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL TO APPLY FOR FY2022 RECYCLING AND ILLEGAL DUMPING GRANT
17. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION NO. 2021-05, A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S) FOR STATE OF NEW MEXICO DEPARTMENT OF ENVIRONMENT FOR CAPITAL APPROPRIATION PROJECT SC MAGDALENA GARBAGE TRUCK PURCHASE & EQUIPMENT SAP 20-E2222-STB
18. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF GRANT AGREEMENT BETWEEN VILLAGE OF MAGDALENA AND THE STATE OF NEW MEXICO DEPARTMENT OF ENVIRONMENT FOR CAPITAL APPROPRIATION PROJECT SC MAGDALENA GARBAGE TRUCK PURCHASE & EQUIPMENT SAP 20-E2222-STB
19. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF BUDGET ADJUSTMENT RESOLUTION NO. 2021-04, FISCAL YEAR 2020-2021
20. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF NMDOT AVIATION GRANT AGREEMENT PROJECT NO. N29-21-02
21. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF NMDOT AVIATION GRANT AGREEMENT PROJECT NO. N29-21-03
22. PUBLIC INPUT – 1 TOPIC PER PERSON - 3 MINUTE LIMIT  
PUBLIC COMMENT MAY BE MADE IN PERSON OR VIA EMAIL (IF LESS THAN 3 MINUTES). EMAIL COMMENTS MAY BE MADE BY EMAILING COMMENTS TO: [clerk@villageofmagdalena.com](mailto:clerk@villageofmagdalena.com) and/or [mayor@villageofmagdalena.com](mailto:mayor@villageofmagdalena.com) THE DEADLINE FOR WRITTEN PUBLIC COMMENTS TO BE RECEIVED IS MONDAY, MARCH 22, 2021 AT 12:00 PM. EMAILED PUBLIC COMMENT MUST CONTAIN THE AUTHOR'S NAME AND PHYSICAL ADDRESS AND WILL BE ENTERED AND/OR READ INTO THE MEETING MINUTES.
23. ADJOURNMENT

NOTE: THIS AGENDA IS SUBJECT TO REVISION UP TO 72 HOURS PRIOR TO THE SCHEDULED MEETING DATE AND TIME (NMSA 10-15-1 F). A COPY OF THE AGENDA MAY BE PICKED UP AT THE VILLAGE OFFICE, 108 N. MAIN STREET, MAGDALENA, NM 87825. PUBLIC DOCUMENTS, INCLUDING THE AGENDA AND MINUTES, CAN BE PROVIDED IN VARIOUS ACCESSIBLE FORMATS. PLEASE CONTACT THE VILLAGE CLERK/TREASURER IF A SUMMARY OR OTHER TYPE OF ACCESSIBLE FORMAT IS NEEDED. IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AID OR SERVICE TO ATTEND OR PARTICIPATE IN THE MEETING, PLEASE CONTACT THE VILLAGE CLERK AT 575-854-2261 AT LEAST ONE WEEK PRIOR TO THE MEETING OR AS SOON AS POSSIBLE.

# DRAFT

## MINUTES OF THE REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES HELD MONDAY, MARCH 8, 2021 AT 5:00 PM

PURSUANT TO THE PUBLIC HEALTH ORDER DATED January 29, 2021, LIMITING PUBLIC GATHERINGS IN THE STATE, THE FOLLOWING MEETING ATTENDANCE CAPACITY RULES APPLY:

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<https://us02web.zoom.us/j/4861155997?pwd=V0V6SERBNVdGNDNPaE1ZdWp1N004UT09>

Meeting ID: 486 115 5997

Passcode: MAGDALENA

Mayor Richard Rumpf called the meeting to order at 5:00 p.m.

**PRESENT:** Mayor Richard Rumpf, Clark Brown- Trustee, Francesca Gutierrez- Clerk/Treasurer, Kathy Stout – Attorney

**Participating via Video Conference:** Trustees: James Nelson, Donna Dawson

**GUESTS:** Carleen Gomez- Deputy Clerk

Mayor Richard Rumpf requested that all those present recite the Pledge of Allegiance.

**APPROVAL OF AGENDA:** Clark Brown made a motion to approve the agenda, as presented. The motion was seconded by Donna Dawson. The motion carried unanimously.

**APPROVAL OF MINUTES:** Donna Dawson made a motion to approve the February 22, 2021 minutes, as presented. The motion was seconded by Clark Brown. The motion carried unanimously.

**APPROVAL OF CASH BALANCE REPORT:** Donna Dawson motioned to approve the cash balance report, as presented. The motion was seconded by Clark Brown. The motion carried unanimously.

**APPROVAL OF BILLS:** Carleen Gomez- Deputy Clerk, asked to add the following addition: City of Socorro tipping fees \$3370.25. Jim Nelson made a motion to approve the bill list, with the addition. The motion was seconded by Clark Brown. The motion carried unanimously.

**BILL LIST**

Admin Office of Courts	\$48.00
Beasley, Mitchel & Co	\$1577.78
Jacob Finch	\$1074.38
Kapco	\$58.95
Nance Pato & Stout	\$639.00
NM Fire	\$837.34
NM Judicial	\$24.00
Overdrive	\$1532.50
Pitney Bowes	\$214.86
Provelocity	\$1885.00
QuickMed Claims	\$508.37
Quill	\$749.59
RC Plumbing	\$107.44
REB Management	\$997.20
Route 60 trading post	\$100.00
Sierra Propane	\$1236.61
Vector Solutions	\$1285.00
Verizon Wireless	\$886.25
Vexus Fiber	\$66.03
Wex Bank	\$1914.69
WNM Communications	\$821.74
City of Socorro	\$3370.25
<b>Total</b>	<b>\$20366.48</b>

#### **MAYOR'S REPORT**

Mayor Rumpf stated that he was meeting with asbestos experts tomorrow regarding the BIA dorms. He stated the will send the Study to the board tomorrow. The Mayor also mentioned that the burial for indigent persons will be on the 18<sup>th</sup> at 11AM. The Mayor also said he met with the County Roads department and they will be using scrap millings on the road and that the road was too narrow to grade it.

#### **CLERK'S REPORT**

Clerk/Treasurer Francesca Gutierrez had nothing to report.

#### **DEPARTMENT REPORTS**

- a. **EMS**- Jim Nelson, EMS Coordinator, reported 9 calls in February 2021.
- b. **FIRE**- Mayor Rumpf reported 0 calls in February 2021. He said there is a new storage building on the west side and Jeff Josephs is upgrading the paperwork and workstations for the maintenance books and log books for gear and equipment.
- c. **MARSHAL**- A report was submitted by Marshal Zamora and reviewed by the Mayor and Trustees.
- d. **JUDGE**- Judge Simon Armijo and Court Clerk Carleen Gomez submitted a report that was reviewed by the Mayor and Trustees.
- e. **PUBLIC WORKS**- Mayor Rumpf said there were no issues and working on day to day maintenance.
- f. **LIBRARY**- Librarian Ivy Stover submitted a report that was reviewed by the Mayor and Trustees.

#### **DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF BUDGET ADJUSTMENT RESOLUTION NO. 2021-03, FISCAL YEAR 2020-2021**

Michael Steininger reported 3 items for the BAR. The Recycling Grant, meter deposits and Lodgers tax expenditures.

Donna Dawson motioned to approve Budget Adjustment Resolution No. 2021-03, Fiscal Year 2020-2021. Clark Brown seconded the motion.

Clerk/ Treasurer Gutierrez requested a roll call vote:

Jim Nelson- AYE

Harvan Conrad-Absent

Donna Dawson-AYE

Clark Brown-AYE

The motion carried unanimously.

**PUBLIC INPUT – 1 TOPIC PER PERSON – 3 MINUTE LIMIT**

PUBLIC COMMENT MAY BE MADE IN PERSON OR VIA EMAIL (IF LESS THAN 3 MINUTES). EMAIL COMMENTS MAY BE MADE BY EMAILING COMMENTS TO: [clerk@villageofmagdalena.com](mailto:clerk@villageofmagdalena.com) and/or [mayor@villageofmagdalena.com](mailto:mayor@villageofmagdalena.com) THE DEADLINE FOR WRITTEN PUBLIC COMMENTS TO BE RECEIVED IS MONDAY, MARCH 8, 2021 AT 12:00 PM. EMAILED PUBLIC COMMENT MUST CONTAIN THE AUTHOR'S NAME AND PHYSICAL ADDRESS AND WILL BE ENTERED AND/OR READ INTO THE MEETING MINUTES.

There were no public comments or input.

Trustee Donna Dawson motioned to adjourn the meeting at 5:14pm. The motion was seconded by Clark Brown. The motion carried unanimously.

Respectfully Submitted,

Francesca Gutierrez  
Clerk/Treasurer

Richard Rumpf  
Mayor

**BRIAN S. COLÓN, ESQ.**  
STATE AUDITOR



**NATALIE CORDOVA, CPA**  
DEPUTY STATE AUDITOR

**State of New Mexico**  
**Office of the State Auditor**

CONSTITUENT SERVICES  
(505) 476-3821

Via: Email

3/4/2021  
Carleen Gomez, Deputy Clerk/Court Clerk  
cgomez@villageofmagdalena.com  
Village of Magdalena

SAO Ref No. F0008

Re: Authorization to Release 2020 Village of Magdalena Audit Report

The Office of the State Auditor (OSA) received the audit report for your agency on 11/23/2020. The OSA has completed the review of the audit report required by Section 12-6-14(B) NMSA 1978 and any applicable provisions of the Audit Rule. This letter is your authorization to make the final payment to the Independent Public Accountant (IPA) who contracted with your agency to perform the financial and compliance audit. In accordance with the audit contract, the IPA is required to deliver to the agency the number of copies of the report specified in the contract.

Pursuant to Section 12-6-5 NMSA 1978, the audit report does not become a public record until five days after the date of this release letter, unless your agency has already submitted a written waiver to the OSA. Once the five-day period has expired, or upon the OSA's receipt of a written waiver:

- the OSA will send the report to the Department of Finance and Administration, the Legislative Finance Committee and other relevant oversight agencies;
- the OSA will post the report on its public website; and
- the agency and the IPA shall arrange for the IPA to present the report to the governing authority of the agency, per the Audit Rule, at a meeting held in accordance with the Open Meetings Act, if applicable.

The IPA's findings and comments are included in the audit report on page 81-90. It is ultimately the responsibility of the governing authority of the agency to take corrective action on all findings and comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Colón", with a stylized flourish at the end.

Brian S. Colón, Esq.  
State Auditor

cc. Beasley, Mitchell & Co., LLP

2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507  
Phone (505) 476-3800 \* Fax (505) 827-3512  
[www.osanm.org](http://www.osanm.org) \* 1-866-OSA-FRAUD





## RESOLUTION NO. 2021-04

### ACCEPTANCE AND APPROVAL OF THE FY 2020 AUDIT

**WHEREAS**, the Village of Magdalena is required by Statute to contract with an independent auditor to perform the required annual audit or agreed upon procedures for Fiscal Year 2020; and,

**WHEREAS**, the Board of Trustees has directed the accomplishment of the audit for FY2020 be completed; and,

**WHEREAS**, this audit has been completed and presented to the Village of Magdalena Board of Trustees on March 22, 2021 and letter from the State Auditor authorizing release of the FY2020 audit dated March 4, 2021.

**WHEREAS, NMAC 2.2.2.10(M)(4)** provides in pertinent part that "Once the audit report is officially released to the agency by the State Auditor (by release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable;" and,

**NOW THEREFORE, BE IT RESOLVED**, that the **VILLAGE OF MAGDALENA** does hereby accept and approve the completed audit report and findings as indicated within this document.

**ACCEPTED AND APPROVED** this 22<sup>nd</sup> day of March, 2021 in regular session by the Board of Trustees, at the Village of Magdalena, Socorro County, New Mexico.

#### **ROLL CALL VOTE:**

Trustee James Nelson	YES	NO
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\_\_\_\_\_  
Richard Rumpf, MAYOR

Trustee Harvan Conrad	YES	NO
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ATTEST:

Trustee Donna Dawson	YES	NO
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\_\_\_\_\_  
Francesca Gutierrez, CLERK/TREASURER

Trustee Clark Brown	YES	NO
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**Request to Village of Magdalena for Use of Lodger's Tax  
(Pursuant to Lodger's Tax Act Section 3-38-14 NMSA 1978)**

**Our mission is to stimulate economic growth by marketing Magdalena as a visitor destination through tourism.**

**Eligible uses of Lodger's Tax Proceeds are to defray the costs of:**

- **advertising, publicizing and promoting tourist-related attractions, facilities and events as stated in SECTION 4 of the Village Ordinance.** (A complete copy is available upon request.)

1. This request is made by MAGDALENA CHAMBER OF COMMERCE (Applicant)

Address:

P.O. Box 281  
MAGDALENA NM 87825

Phone: JOHN LEE, PRESIDENT  
610-656-2861

Email: JOHN@RCRC@GMAIL.COM

- ☒ 501-3C Non-Profit Entity; (provide proof)  
☐ For Profit Entity; (Private Individual/Entity)  
☐ Group/Organization without Non-Profit Status;  
☐ Other: \_\_\_\_\_

The purpose of this request is to provide tourist related activities and contract with the Village and other individuals/entities in the provision of tourist-related promotional activities.

Name of Event:

SOURCE MAGAZINE

Location of Event:

FREE COPIES ARE DISTRIBUTED AT

Description of Event: COMMERCIAL ESTABLISHMENTS FREE OF  
CHARGE

Is this a fund raising event? Please describe:

NO

Proposed Date of Event: ONCE A YEAR PUBLICATION

1. **All printed material must include the Village logo (available at Village Hall once approval has been given), and indicate that Village of Magdalena Lodger's Tax funds were used in the purchase of said items.**

• **BEFORE EVENT**

- Applicant is required to provide an estimated budget to include: Revenue (income from sponsors, sales, booth space fees, etc.) and



Expenses (advertising, rental fees, etc.).

- FOLLOWING EVENT

- Applicant shall provide accurate financial records (invoices, receipts, etc.) for all items for which the City pays.

2. Use of Funds

The use of Village of Magdalena's Lodger's tax funds are outlined by Village Ordinance No. 2015-06. The requirements as outlined by the Village's Lodger's Tax Ordinance must be adhered to in the execution of all aspects of this request. Applicant acknowledges that a complete copy is available and understands the eligible uses of Lodger's Tax Proceeds. \* Lodger's tax funds are not to be used to pay for motel rooms.

3. Terms and Conditions of this Request

A. Contractor is requesting \$ 1056.56 in Lodger's Tax funds to be used as follows:

TO PAY FOR PROMOTIONAL PART OF "SOURCE"  
MAGAZINE THAT TELLS OF UPCOMING EVENTS AND THE  
HISTORY OF MAGDALENA.

COMMERCIAL ADS IN THE MAG-DALENA SECTION OF  
THE MAGAZINE ARE PAID BY THE MERCHANTS THEMSELVES.

B. Any other requests (ie. Use of Village property, police escort, etc. must be made at Village Hall). THE CHAMBER HANDLES BILLING AND PAYMENT  
TO THE CHEFTAIN FOR THE COMMERCIAL PART OF THE

This request is submitted the 18 day of MARCH, 2021. MAGDALENA  
SECTION,

John W. Lee J. D.V.M.  
Applicant Signature

\_\_\_\_\_  
Village of Magdalena

Approval

As Mayor of the Village of Magdalena I am authorizing the above described event with the understanding that all preliminary administrative functions have been met (i.e. budget, Board approval, etc.).

\_\_\_\_\_  
Richard Rumpf – Mayor

**EVENT/ORGANIZATION:** \_\_\_\_\_

**BUDGET WORKSHEET** (complete this form as an estimate BEFORE your event and again AFTER your event showing actual amounts, along with an event summary)

**INCOME SOURCES**

ESTIMATE / ACTUAL

_____
_____
_____

_____	_____
_____	_____
_____	_____

**TOTAL INCOME**

_____	_____
-------	-------

**EXPENSES**

ESTIMATE / ACTUAL

_____
_____
_____
_____
_____
_____
_____
_____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**TOTAL EXPENSES**

_____	_____
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**MARKETING**

Who is your target market?

*TOURISTS AND PASS THRU VISITORS*

*ALSO RESIDENTS WHO ARE NOT AWARE OF SOME LOCAL BUSINESSES*  
How/where are you advertising your event? Does this reach your target market?

\* Please include copies of all advertisements following event.

ESTIMATE / ACTUAL

Number of Visitors at Event

_____	_____
-------	-------

Number of Motel Rooms Filled

_____	_____
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**EVENT SUMMARY** (Please let us know how your event went, things that went well, areas that need work or attention for next year)

# Discover **MAGDALENA**

**Trail's End and Gateway to the Stars**

*They don't make places like this anymore!*



**Explore, Eat, & Stay:** hiking, horseback riding, cowboy roundups, rodeo, star parties, art tours, rock climbing, antiquing, rock hounding, hunting, historic train depot, Stockyard, Box Car Museum, Very Large Array, Magdalena Ridge Observatory, Kelly Mine, & Riley ghost town!

## **Magdalena Annual Events**

**All Are Welcome**

**New Years Day Poetry (Jan 1st)**

**Trinity Site Tours (First Sat in Apr and Oct only)**

Trinity Site is where the first atomic bomb was tested on July 16, 1945

**Magdalena Studio and Gallery Tour (First Sat May)**

Museums, Artists and Galleries open their doors with music and food

**Santa Rita Church Festival (Fourth Sat May)  
in Riley, NM**

Mass at 10am and lunch following

**Frontier Festival (First Sat June)**

Frontier history comes alive with demonstration, talks, food and music

**Kelly NM Church Fiesta (Third Weekend June)**

San Juan Bautista Mass 10am, lunch, music, more

**Old Timers Reunion and Rodeo**

**(Second Weekend July)**

Multicultural old west family rodeo at the "Trails End"

**Mary Magdalene Church Fiesta**

**(Second Weekend July)**

Lunch, music and more

**Pie Festival USA (Second Sat Sept) in Pie Town, NM**

All Things Pie: Pie Fun Run, Pie Baking Contest

**Enchanted Skies Star Party (A week in Oct)**

Professional and amateur astronomers observe the universe, attend workshops ...

**Indian Day Celebration Alamo, NM (Oct)**

An adventure into Native American culture with a parade and dance

**Honoring our Veterans 9am (Nov 11)**

Flags Placed at Magdalena Cemetery

**Festival of the Cranes (Nov)**

Bosque del Apache Wildlife Refuge near San Antonio, NM

**Holiday Decorating Contest (Dec)**

**Holiday Craft Fair (Dec)**

Benefiting the Magdalena Old Timers Reunion and Rodeo

**Christmas Electric Light Parade Visit Santa Claus  
(Second Sat Dec)**

**Magdalena Community Christmas  
Potluck and Caroling (Dec)**

**www.magdalena-nm.com** For information on events in Magdalena or call the Chamber at: 575-854-2400  
Or stop at the Visitors Center - Rt 60 Trading Post - Hwy 60 - 575-418-7372



Paid for in part by Magdalena Lodger's Tax - [www.villageofmagdalena.com](http://www.villageofmagdalena.com) & Magdalena Chamber of Commerce

ORDINANCE NO. 1995-1  
VILLAGE OF MAGDALENA  
AMENDED 2009-02  
AMENDED 2017-01  
AMENDED 2021-01

AN ORDINANCE ESTABLISHING A JOINT UTILITY SERVICE; ESTABLISHING A VILLAGE SERVICE FOR THE COLLECTION AND DISPOSAL OF TRASH; AMENDING ALL PREVIOUS ORDINANCES RELATING TO WATER AND SEWER SERVICE; PROVIDING FOR THE IMPOSITION AND COLLECTION OF FEES, CONNECTION CHARGES, UTILITY RATES; DEFINING APPLICATION AND SERVICE POLICIES; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF MAGDALENA, NEW MEXICO, THAT:

SECTION ONE - JOINT UTILITY DECLARED.

It is necessary and for the best interests of the Village of Magdalena and the inhabitants thereof that the Village-owned water system, sewer system, and trash service constitute a joint public utility system designated as the *Village of Magdalena's Joint Utility System* and be operated and maintained as such.

SECTION TWO - SEPARABILITY.

If any section, paragraph, clause or provision of this ordinance 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 ordinance.

SECTION THREE - NONSEPARABLE CHARGES AND SERVICE.

(a) Except as otherwise provided in this ordinance, the water, sewer, and trash services of the Village are nonseparable services; and the request for the furnishing of one service shall mean the charge and collection, whether used or not, of all other services, such services to appear on the same monthly statement. Similarly, a request for the termination of one such utility service is a request for the termination of all such utility services, and a termination of utility service for a portion of a structure is declared to be termination of utility services for all of the structure.

(b) Should one (1) or more of the utility services not be used when all of the nonseparable services are available, the minimum rates as set forth in the applicable rate sections shall be charged and collected with the charges for the utilities used.

(c) When it is not otherwise possible for the Village to furnish all of the nonseparable services, the furnishing of separate utility services may be permitted provided proper application is made with the Village utility office and approval has been granted by the Mayor and confirmed by the Board of Trustees. Under these circumstances, the Village will charge only for the services available.

However, no sewer service will be provided unless the unit or multiunit is on the Village water system.

#### SECTION FOUR - UTILITY SERVICE APPLICATION; DEPOSIT REQUIREMENTS.

(a) Before utility services shall be supplied to any person, firm or corporation application for the use of such utility service must be made at the Village utility office on printed forms furnished for that purpose. Every such application must be signed by the owner of such property to be benefited or by his agent and must state fully and truly the purposes for which the utility services are to be used, the name and address of the person, firm or corporation to be billed for such service, the description of lot and block or tract, name of the street on which property fronts and must agree to the rules and regulations established from time to time as a condition for the use of utility service. Refer to Section 10 for review of owner's financial responsibility.

(b) The application shall constitute a contract on the part of the Village of Magdalena to furnish utility services within the Village limits or when applicable, within the Existing Service Area (ESA) and on the part of the applicant to pay the stipulated rates at the time and in the manner provided for in this ordinance, reserving to the Village of Magdalena the right to enforce and collect rates and penalties in the manner provided for in the utility ordinance; to temporarily discontinue service at any time without notice to the consumer for maintenance, repair, conservation or emergency; and further to provide that the utility department of the Village of Magdalena, or the officials or employees thereof: shall not be responsible for any damages by water or otherwise resulting from defective plumbing, broken or faulty service, or condition of the water itself: or any substance that may be mixed with, or be in the water, as delivered to the consumer.

(c) Application for non-standard utility service shall be made with the Village Clerk for the following exceptions to standard utility service:

- (1) Residents living outside of the ESA but requesting trash collection service.
- (2) Requests for multiple trash collection trips.
- (3) Requests for additional or larger trash bins.
- (4) Requests for any non-standard service.

Application Procedure for non-standard utility service: Application must be made with the Village Clerk. If no new construction is required; the Mayor can approve or deny the application. If approved by the Mayor, service can be provided on a temporary basis pending presentation and approval of the application at the next regularly scheduled meeting of the Board of Trustees. All rates and conditions of service provided in this utility ordinance apply unless otherwise specified by mutual agreement and in writing. If the Mayor's decision is confirmed by the Board of Trustees, service continues. If not, service is terminated and a final bill for the term of service is rendered. If construction services are required, no temporary service can be provided and approval must come from the Mayor and the Board of Trustees. All applications and related final actions will be kept on file at Village utility office for future reference.

(d) Each application for utility service supplied to any person, firm or corporation by the Village of Magdalena will require an application fee as set forth in APPENDIX A and a deposit sufficient to cover two months of utility usage. Two months is used because that is the length of time a unit or multiunit can use utility service before being disconnected for non-payment (from the first of one

month until the 25th of the following month). Refer to Section 8 for details. A minimum deposit is set forth in APPENDIX A which is based on average consumption figures for existing customers. That is the amount that will be used for new accounts with no usage history. Meter deposits will be refunded to customers in good standing for five (5) years.

Existing utility customers of the Village of Magdalena utility services will not be required to place additional deposit money with the Village provided their account has a good payment history. A good payment history is defined as an account that has not been issued more than two late payment notices within a two year period and has not been disconnected for non-payment within two years. If an account presents a risk to the Village of Magdalena's Joint Utility System due to bad payment history, then it is subject to additional deposit requirement up to an amount sufficient to cover two months total utility billing based on a twelve month average of that account; but not less than the current minimum stated in APPENDIX A. Any account that has been disconnected for non-payment will be considered to have bad payment history and will be required to meet the current deposit requirement in addition to paying the amount of past due usage for which the account was disconnected.

All utility deposits shall be retained by the Village to be applied against unpaid charges for utility service. Upon payment in full of all charges for utility service and discontinuance of utility service, such deposit or the balance thereof after application to unpaid charges, shall be refunded.

#### SECTION FIVE - DISCONTINUANCE OF SERVICE.

A. Written request must be submitted to the Village Clerk by the Applicant of Record, his designee, or the designated responsible party on the account to discontinue Village utility service. The written request must state the date service is to be discontinued and the address to send the final bill or refund of deposit. There is no fee for voluntary discontinuance of utility service provided a written request is made.

B. Trash service may be discontinued for customers if unacceptable waste, as defined by Section 18 of this Ordinance is deposited in bins as such waste, particularly infectious waste, places Village employees in harm's way. Improper disposal of such waste may constitute a felony under NMSA 1978, Section 74-9-37(B).

#### SECTION SIX - VILLAGE OF MAGDALENA RESPONSIBILITIES.

(a) The Village shall be responsible for the installation of a secondary water line from the water main to a stopcock located just within the customer's property line next to the street curb and for installation of a secondary sewer line from the customer's property line to the sewer main, but nothing herein shall obligate the Village to lay any service line for a distance of more than twenty (20) feet. Extensions beyond twenty (20) feet can be made at the expense of the applicant based on the actual cost of the extension beyond twenty (20) feet.

(b) The Village shall be responsible for the maintenance, repair and clearing of all water and sewer mains.

- i) If blockage occurs, the customer will notify the Village immediately. The Village will determine whether the blockage is on the Village's or the customer's side;

- ii) The Village will not be responsible for damage caused or invoices charged by a plumber hired by the customer when the blockage is on the Village's side. The Village will arrange for and approve plumbing when it is determined by Village staff that the blockage is on the Village's side.

(c) The Village shall be responsible for the installation, maintenance, and repair of the meter box and curbside stopcock.

(d) The Village shall be responsible for the installation, maintenance, repair, inspection, calibration for accuracy, and replacement of all water meters, as well as all service lines from the meter to the main.

- i) each customer may request one (1) free Field Test on their meter per year;
- ii) the second Field Test will incur a \$25.00 charge, unless the second test determines that the meter is defective;
- iii) if the customer requests a new meter that has passed Field Test(s), a \$150.00 charge will be incurred for the new meter.

(e) The Village shall be responsible for meeting all federal and state regulatory requirements for the proper maintenance and management of its utility service systems.

(f) Every attempt will be made to notify customers of unusually high usage once it comes to the Village's attention.

(g) The Village shall be responsible for trash collection service as follows:

- (1) Prompt, dependable collection as scheduled each week
- (2) Clean up of employee-caused collection spills
- (3) Routine maintenance, repair, and inventory of trash bins
- (4) Prompt customer notification of and reason for failure to collect trash
- (5) Proper sanitation of recycled trash bins prior to reissuing

## SECTION SEVEN – UTILITY CUSTOMER RESPONSIBILITIES.

(a) The customer shall be responsible for the installation, maintenance and repair of all water service lines between the meter and the point of use and for the installation, maintenance and repair of all plumbing fixtures, and shall provide that an emergency valve be placed upon such line between the meter and the customer's premises. For service lines installed prior to enactment of the requirement, if such emergency valve has not been installed, it shall be installed prior to any subsequent reconnection. A one-time credit of ten dollars (\$10) is offered to any customer with existing service prior to enactment of this requirement who voluntarily installs an emergency valve on their water service line in order to comply with this requirement. Verification of the new installation must be made by Village utility personnel.

(b) The customer shall be responsible for the installation, maintenance, repair, and clearing of all



sewer service lines between point of use and up to the sewer main line and for the installation, maintenance and repair of all plumbing fixtures. Each sewer service is required to have a clean-out. For service lines installed prior to enactment of this requirement, if such clean-out has not been installed, it shall be installed prior to any subsequent reconnection. A one-time credit of dollars (\$10) is offered to any customer with existing service prior to enactment of this requirement who voluntarily installs a clean-out on their sewer service line in order to comply with this requirement. Verification of the new installation must be made by Village utility personnel.

(c) The customer shall be responsible to make their Village-provided trash bin accessible for trash collection. All trash bins shall be placed at their designated collection curb site no later than 8:00 am on the day scheduled for trash collection in their area. Customers whose residence is accessible by cross streets may choose the street curb which is most convenient for them, but once designated, no change will be made without written request and approval. The customer shall be responsible for keeping all trash picked up from around the designated trash collection site.

(d) The customer shall be responsible for the care and cleaning of their Village provided trash bin. This includes the periodic washing of the trash bin, placing all trash in sealed trash bags before depositing it in the trash bin to promote cleanliness and prevent possible health hazards, and not depositing any toxic or hazardous waste or any hot or flammable objects in the trash bin. Cardboard items may be placed in the trash bin if torn or folded to fit with the lid closed without being put in a trash bag first. All trash is to be placed inside the Village-provided trash bin for collection, and the bins not to be filled to overflowing. If one trash bin is not sufficient, the customer may request an extra bin or bins for an additional charge as described in APPENDIX A. The Village will not collect any trash not placed in a Village-provided trash bin. Failure to comply with proper care and maintenance of a Village-provided trash bin may result in a written notice from the Village utility office citing the steps necessary to comply' and if no action is taken to correct the noncompliance, charges may be assessed as prescribed in APPENDIX A.

## SECTION EIGHT - MONTHLY SERVICE RATES; BILLING; DUE DATE; DELINQUENCY.

Monthly service rates for water, sewer, and trash service are set forth in APPENDIX A. These rates will become effective on the first of the month following the enactment of this joint utility ordinance. Monthly service rates may be reviewed annually, but in no case less than bi-annually on the anniversary date of enactment, to insure that the rates continue to be a reflection of the cost of providing reliable and consistent service. APPENDIX A may be amended without changing any other provision of this joint utility ordinance.

The New Mexico Governmental Gross Receipts Tax and other taxes, if applicable, shall be added to the rates and charges established in APPENDIX A

Bills for water, sewer, and trash service supplied by the Village Joint Utility System shall be sent to account holders on or about the first (1st) day of the month and shall be due upon receipt or the 20<sup>th</sup> day of the month billed, by 5pm.

Bills not paid in full by the 21<sup>st</sup> of the month shall be considered delinquent, and a past due penalty as prescribed in APPENDIX A shall be added to the unpaid balance. A notice shall be mailed to the customer citing the delinquent bill and penalty and warning that, if any account remains unpaid fifteen (15) days following the date due and payable, utility service may be shut off. The notice shall

also contain the address and phone number of the Village utility office and the name of the Village Clerk or other employee designated to investigate complaints, resolve disputed billing and negotiate delayed payments, if justified.

No service will be disconnected for non-payment on a Friday or the day preceding a holiday. The utility customer will always have one working day following disconnect to pay the outstanding charges and have service restored.

Utility service shall not be resumed for that customer unless payment has been received of the unpaid balance plus a disconnection for non-payment charge as set forth in APPENDIX A. Other charges may apply such as additional deposit as described in Section 4. There will be no additional charge for reconnection by the same customer of record provided no tampering has occurred.

Any attempt by the disconnected customer to reconnect to Village water service by tampering with the water meter, bypassing the meter or by any other unauthorized means of connection to water service shall be considered theft of service and shall be subject to penalty as prescribed in Section 25. In addition, a disconnect fee for each removal of bypass connection and any actual cost to repair damages to the utility system caused by the tampering must be paid.

Any build-up of trash during the period of disconnection of service shall be billed according to the number of additional trips necessary to collect and remove the trash. If no additional trips are necessary, then no additional charges will be rendered.

The Village may use collection agencies to collect delinquencies, and may report such delinquencies to credit bureaus.

## SECTION NINE - ASSISTANCE PROGRAM FOR LOW-INCOME FAMILIES TO PAY FOR UTILITY BILLS.

In order to reduce the financial hardship on low-income persons that this joint utility ordinance may present, the Village of Magdalena would like to implement an Assistance Fund as approved by the state Legislature in 1993 entitled the Low Income Water, Sewer and Solid Waste Service Assistance Act. Revenues for the Assistance Fund would be derived from voluntary surcharges on utility customers' monthly bills, donations, pledge drives, or other community fund-raising events. The number of low-income persons which could be assisted each month and the level of assistance would be dependent upon the amount of balances in the Assistance Fund. A maximum monthly subsidy amount as described in Appendix A would be available to those who qualify. The customer would be responsible for paying charges above the subsidized amount. If the Assistance Fund does not have sufficient balances to pay all of the maximum subsidy, then each eligible customer would only receive a pro-rata share of the subsidy and the customer would be responsible to pay the rest of the monthly utility bill. No free service or reduced charges would be provided by the Village of Magdalena. The only money available for subsidy would be that which was contributed on a volunteer basis from the community. Assistance Program Qualification Policy is defined in APPENDIX B.

## SECTION TEN – PRIVACY OF INFORMATION; ACCEPTING PAYMENTS.

No account billing information may be discussed by or with Village personnel outside the Village of Magdalena utility office. All payments are to be made either through the mail to the Village of Magdalena, P.O. Box 145, Magdalena, NM. 87825; in person at the Village of Magdalena utility office during regular office hours; in a designated Drop Box; or, by credit/debit card over the phone.

## SECTION ELEVEN - RETURNED CHECKS.

Upon receipt of a returned check, the Village staff will assess a Non-Sufficient Fund (NSF) Fee as prescribed in APPENDIX A and reverse payment credit on the customer account or accounts. The account is then subject to treatment for non-payment as if no payment had been received. Notice will be mailed to the customer of the failure of payment, the NSF fee, the outstanding balance due, and the date the service will be subject to disconnection for non-payment. The disconnection date will be on or around the twenty-fifth (25th) of the month following the due date, but not less than seven (7) days from the date the NSF notice will be mailed. Unless prior request not to do so has been made by the utility customer, the NSF check will be submitted to the Village bank for a second time. If the check is returned a second time, action will proceed as described in the NSF notice that will have already been mailed to the utility customer. If the check is good for payment, no further action will be taken. It is the responsibility of the utility customer to verify that the Village has received payment before the disconnect date stated in the NSF notice.

## SECTION TWELVE – PAYMENT ARRANGEMENTS.

No more often than once in a two-year period, Payment Arrangements (PA) may be made on an outstanding account balance. The request for PA must be made with the Village Clerk who can approve PA on up to 50% of an outstanding account balance under \$1,000.00. PA on over 50% of the outstanding account balance under \$1,000.00 must be approved by the Mayor or his designee. If the amount owed is \$1,000.00 or more, PA must be made by the Board of Trustees. A PA can not reduce any portion of the outstanding balance, including returned check fees, disconnection fees, account deposits, or any other account charges. The Village Clerk can extend the outstanding account balance for a period of up to three months. Any period of time beyond three months must be approved by the Mayor or his designee. Payment arrangements made on the outstanding balance will be due with the next billing of monthly service charges, but will not extend the due date of the monthly service charges not included in the payment arrangement.

Example:

Outstanding balance due 1-20-95	\$60.00
Pay 50% prior to 1-20-95	<u>-30 00</u>
PA on balance of	\$30.00 for three payments of \$10.00 each

Monthly service charges due 2-20-95	\$20.00
1st payment on PA	<u>10 00</u>
Payment due prior to 2-20-95	\$30.00

Balance due on PA is \$20.00

Repeat for bills due on 3-20-95 and 4-20-95.

In the above example, if payment of at least \$30.00 is not received by 2-20-95, a disconnect notice will be mailed citing a disconnect date of 2-25-95. If the account has to be disconnected for non-payment of the monthly service charge plus the amount due on the P A, then the entire account balance becomes due prior to reconnection. The PA is voided.

The Payment Arrangement must be in writing and signed by the utility customer and the Village Clerk or other designated Village employee. If approval by the Mayor was required, then the Mayor's signature will also be required.

#### SECTION THIRTEEN – INOPERATIVE METER.

In the event that the water meter is found to be inoperative, the next billing shall be based on usage registered as of the stoppage or upon the average monthly usage reading for that account for the prior twelve months, whichever is greater. In the event that the Village is unable to repair or replace the meter before the next monthly reading, billing for the subsequent month shall be based on the average usage reading for that account for the prior twelve months.

#### SECTION FOURTEEN – VILLAGE AUTHORITY TO RESTRICT WATER USE.

The Village Mayor or his designee reserves the right, in case of drought, lack of rainfall or other emergency, to forbid the use of water for irrigation, sprinkling or for any other use not necessary for the preservation of life; and the Village Council, in its discretion, may at any time, make such order by giving public notice within the Village. Any person, firm or corporation violating such order shall be subject to a first-offense charge as set forth in APPENDIX A, and double the first offense charge for each subsequent offense; and the water shall be turned off, and the same shall not be turned on again until all such charges and any unpaid balances are paid in full.

#### SECTION FIFTEEN – INDIVIDUAL UTILITY SERVICES.

Except as provided in Section 17, utility service is provided only for the owner's single-family residential unit, and no connection will be made to provide utility service to any building or structure other than the owner's single-family residential unit and related accessory structures. Each unit served shall be under separate ownership or control of the customer and shall be located on a separately owned tract of land unless otherwise authorized by the Village of Magdalena pursuant to exceptions in Section 17. All fees and/or charges for the initiation of utility services shall be paid by the person owning such unit(s) to be served before such service begins.

#### SECTION SIXTEEN – EXCEPTION TO REQUIREMENT OF INDIVIDUAL UTILITY SERVICES.

(a) Multiunit residential and multiunit general service units which are under a single ownership may

be furnished utility service from the Village through one (1) master water meter or sewer tap at the rates specified for multiunit.

(b) The Village Mayor may also, subject to review by the Village Council, upon determination that unnecessary expense and undue burden or other unreasonable difficulty would be caused by the requirement set forth in Section 16 that a single meter be required for each residential or general service unit, permit and direct that utility service be provided through one (1) or more water meters or sewer tap of adequate size installed by the Village and paid for by the user as provided in Section 16 to serve two (2) or more units.

(c) The Village of Magdalena may enter into separate contracts, notwithstanding Section 3 pertaining to nonseparable charges, and provide water service to separate meters for sprinkling and lawn watering if the customer can demonstrate that the installation of a separate meter will provide an equitable sewer service charge to such customer. Sprinkling meters shall be subject to periodic inspection by the Village.

(d) The Village Mayor may authorize utility service to separate water meters or sewer taps installed within mobile home parks as an exception to Section 16.

#### **SECTION SEVENTEEN – TRASH & REFUSE COLLECTION AND DISPOSAL.**

(a) Acceptable Trash. The Village of Magdalena shall pick up and dispose of any and all normal household trash which is properly placed in a sealed trash bag and placed in trash bins. Acceptable trash is defined in APPENDIX B.

(b) Unacceptable Trash. The Village of Magdalena will not pick up and dispose of any unacceptable trash such as old car bodies, hazardous waste, or infectious waste. Unacceptable trash is defined in APPENDIX B. For instructions on the proper disposal of these items, call the Village utility office.

(c) Disposal of Ashes. Ashes can be taken to the Transfer Station during normal business hours free of charge.

(d) Village-provided Trash Bins. Trash bins will be numbered and the numbers recorded for inventory purposes. Each customer shall be required to sign for their bins and thereby accept responsibility for said bin. (Customer responsibility does not include normal maintenance- See Section 7 on Responsibilities). If, during the course of normal wear & tear and between regular scheduled collections, a customer notices a faulty bin (bad wheels, handles, lid fastener, etc.) and wishes it replaced, the customer may call the Village utility office and request a replacement bin. A \$30.00 replacement charge will be owed for each replacement bin. The customer shall again be required to sign for the issue of the new bin. The defective bin shall then be replaced, as soon as is practical, with a bin of good working order.

(e) Transfer Station. The Transfer Station shall have operating hours as determined by the Village Council at which time the Village of Magdalena Joint Utility System customers may take items not suitable for curbside collection, but which the Transfer Station will accept. Such items are defined in APPENDIX B. For specific details, contact the Village utility office.

## SECTION EIGHTEEN - INITIAL CONNECTION CHARGES - (TAP FEE).

In addition to meeting the utility service application and deposit requirements listed in Section 4, if new construction is required then the following will apply.

(a) Each applicant for water service connection shall pay a connection charge to cover indirect costs for tapping the water main, laying a secondary distribution line from the water main to a point just outside the applicant's property adjacent to the street curb and for the installation of the meter box, water meter and curbside stopcock.

(b) Each applicant for sewer service connection shall pay a connection charge to cover indirect costs for tapping into the sewer main.

(c) The Village of Magdalena shall not be held responsible to provide utility service that will require line extensions of more than twenty (20) feet from existing main lines or connections at a higher elevation than the elevation of existing storage facilities. Extensions that exceed the preceding description may be negotiated in the same manner as the application procedure for non-standard utility service described in Section 4.

## SECTION NINETEEN - RATES AND CONDITIONS OF SERVICE: UTILITY SERVICE TO SINGLE-FAMILY RESIDENTIAL UNITS LOCATED OUTSIDE THE VILLAGE OF MAGDALENA.

(a) *Service to single-family residential units located within the Existing Service Area (ESA).* The Village Mayor or his designee may enter into agreements to provide utility service to single-family residential units located outside of the Village limits but within the ESA. Such agreements shall be in writing and in such form as may be approved by the Village Attorney, and, unless otherwise directed by the Village Council, shall, among other things, require the owner of the property to be served to agree as conditions to the receipt of such utility service:

(1) To pay customer and capacity charges and volume charges at one hundred fifty (150) percent of the rate for single-family residential units within the Village limits (provision to apply even if the water meter or sewer tap is located within the Village limits but the use of the utility service occurs outside of the Village limits);

(2) That the property to be served shall be subject to a lien for payment of charges for any and all municipal services provided by the Village to the property;

(3) To the annexation of the property to be served by the Village of Magdalena at such time as the Village government may determine that the growth and expansion of the Village requires such annexation;

(4) To comply with all applicable ordinances, rules and regulations of the Village of Magdalena, including the provisions of this ordinance, pertaining to the providing of joint utility service;

(5) To furnish a bond or other security in such form as the Village may require to guarantee payment for utility services;

(6) To comply with all federal, state, county, or local land use regulations that may be applicable to the premises, including those of the Village of Magdalena;

(7) To pay in advance for any line extension required to serve the property pursuant to the rules and regulations of the Village of Magdalena and Section 19 of this joint utility ordinance;

(8) To provide any and all easements (which shall be dedicated to the Village of Magdalena and be in such form as the Village may require) as may be necessary to provide utility service to the property to be served;

(9) That all lines, meters, and other facilities required to serve the premises shall meet or exceed village standards and specifications and shall be subject to Village installation and inspection procedures;

(10) That there shall be no obligation on the part of the Village to provide fire protection or other village services to the property to be served;

(11) That the user and owner of the property to be served shall be subject to the provisions of the Utility Ordinance which pertain to conservation and curtailment of water service in the event of drought, lack of rainfall or other emergency;

(12) That utility service is provided only for the owner's single-family residential unit and that no connection will be made to provide utility service to any building or structure other than the owner's single-family residential unit and related accessory structures;

(13) That failure of the utility user, or of the owner of the property to be served, to abide by the rules and regulations of the Village of Magdalena shall be cause for termination of utility service to the property;

(14) That the foregoing provisions shall be incorporated into the agreement as covenants which shall attach to and run with the land to be served.

(b) *Service to single-family residential units located outside of the ESA.* The Village Mayor or his designee may enter into agreements to provide utility service to single-family residential units located outside of the Village limits and outside the ESA only if a variance has been granted for such utility service by the Zoning Commission. Any such agreement shall be in writing, shall be approved by the Village Attorney, shall include all restrictions or conditions imposed by the Zoning Commission or the Village Council, shall require the owner of the property to be served, among other things, to agree to all of the conditions set forth in subsection (a) above, and further require the owner of the property to be served to agree:

( 1) That there may not be adequate water pressure available to serve the premises and owner must therefore, at owner's expense, provide supplemental pumping, pressure and water storage facilities to be located on owner's premises;

(2) That the supply of water available to serve the premises may be severely limited or interrupted



from time to time;

(3) That, in the event of water shortage or emergency, water users within the Village ESA shall be first served and that utility service available for the owner in such case may be severely limited or restricted;

(4) That the foregoing provisions shall be incorporated into the agreement as covenants which shall attach to and run with the land to be served.

## SECTION TWENTY - EXTENSION OF UTILITY SERVICE OUTSIDE OF EXISTING SERVICE AREA (ESA).

(a) New utility service outside of the ESA shall be restricted to those zones for which current facilities are adequate to serve the additional demand, except in those instances where the Village shall determine that extraordinary circumstances exist and that the extension of municipal utility service beyond the boundaries of the ESA is in the best interests of the citizens of Magdalena.

(b) The boundaries of the ESA shall be reviewed periodically, and amended if necessary, to assure that ample amounts of serviceable land remain available for development;

(c) Future expansion by the Village within the boundaries of the ESA which is aimed at serving new areas or improving service to areas already serviced, shall be allowed only after finding that a need for the expansion exists and, in the case of new service, after the cost of providing new service, is weighed against revenues to be derived from new customers;

(d) Future annexation action by the Village shall be taken only after due consideration is given to the constraints of the water delivery system, sewer system, and trash collection service, in order to avoid annexing territory which lies beyond the boundaries of the ESA;

(e) The Village, in the reasonable exercise of its discretion, may grant a variance to the policy set forth in this section any may authorize utility service to single-family residential units beyond the ESA boundaries if the owner of the property to be served shall enter into a written agreement as required by Section 20 of the utility ordinance subject to the following restrictions:

(1) A variance shall not be granted for water service if the elevation of the property to be served is greater than the elevation of the Village water tank which serves the area;

(2) A variance shall not be granted if the distance from the premises to be served to a Village water or sewer line is greater than six hundred (600) feet;

(3) Customer-provided transmission lines outside of Village limits become Village property.

(f) The Village, in the granting of a variance pursuant to subsection (e) above, shall take the following factors, among others, into consideration:

(1) The proximity of the premises to be served to the Village limits;

- (2) Benefits which may result to the Village, such as increased revenues, better water circulation, and the like;
- (3) The ability of the Village to otherwise satisfy utility service requirements of other residents in the areas;
- (4) Water pressure available and water pressure problems which may be encountered if the variance is granted;
- (5) Sewage disposal capacity of existing system and whether such waste, refuse, or sewage proposed contains ingredients, chemicals or other matter which will not permit the proper, efficient, successful and continuous operation and functioning of the Village sewage disposal works in a continuous and efficient manner;
- (6) The impact upon other residents in the area to be served;
- (7) The density of development in the area for which service has been requested and the probability of future development in the area.

#### SECTION TWENTY-ONE - EXCEPTIONS TO RATES; LARGE USERS.

- (a) Notwithstanding any other provision of this chapter, the Mayor, subject to the approval of the Village Council, may negotiate and establish separate utility rates and reasonable rate classifications for utility user associations i.e.: subdivisions, whose members are not individually metered by the Village and large commercial utility users.
- (b) All such contracts shall be in writing, and all such contracts (except those entered into with other municipalities) which provide for utility usage outside of the Magdalena Village limits shall, among other things, unless for good cause waived by the Village Council, require that the utility user shall;
  - (1) Abide by all terms and conditions of any applicable Village ordinance, rule, or regulation which pertains to the providing of utility service;
  - (2) Require that a large commercial or other large user, whether within or outside the Established Service Area, reasonably expected to utilize 75 thousand gallons or more per billing period or month shall provide bond or security to guarantee payment of utility service;
  - (a) Require that the large commercial or other large user, whether within or outside the ESA, shall provide the Village a projection of the impact of their water and/or sewer usage over a ten year period, on water supplies utilized by the Village. Such projections shall be provided to the Village at the time the potential user makes application for water service. Cost of such projection shall be borne by the applicant.
  - (3) Unless specifically otherwise authorized by the Village Council, pay by cash in advance and prior to installation all costs and expenses which the Village may incur to provide utility service to the point of delivery, including, but not necessarily limited to: the cost and expense of utility lines, extensions, meters, meter back-flow preventer, engineering, licenses, permits, fees, legal expenses

and the cost and expense of obtaining easements and rights-of-way;

(4) Pay for any cost-of-service study which may be required to determine the cost at which utility service should be provided to the utility user;

(5) Comply with all federal, state, county or village land subdivision rules and regulations which are now or which hereafter maybe made applicable to properties to be served under the agreement, and require any person who receives utility service through the utility user's association, and the owner of any property who is to be served through the utility user, to comply with such rules and regulations;

(6) Agree that all utility lines and facilities shall be installed in publicly dedicated streets, or within rights of way or easements which are or will be assigned easily and readily to the Village of Magdalena without cost.to the Village upon annexation to the Village of the property to be served;

(8) Agree that all utility lines and facilities which may be installed by the user beyond the Village water meter or sewer tap, including, but not necessarily limited to, pipes, lines, equipment, regulators, meters, meter cans and stubs, shall meet or exceed the standards established by the Village for such installation at the time of installation and shall be installed and maintained pursuant to Village inspection procedures;

(9) Agree that all lines and facilities shall be certified and properly installed by a licensed and qualified contractor and that all installation shall be inspected by a qualified inspector or engineer acceptable to the Village of Magdalena;

(10) Agree that, as a condition of receiving service, that each customer of the large user or utility users association shall provide to the village a written agreement in such form as the village may require, signed by the owner of the parcel of land which is to receive utility service which shall constitute a covenant which will attach to and run with such land, and which shall be binding upon such owner, and the heirs, personal representatives, successors and assigns of such owner, wherein the owner of the property to receive utility service shall agree to the annexation of the property so served to the Village of Magdalena at such time as the Village Council of the Village of Magdalena may determine that the growth and expansion of the Village of Magdalena requires such annexation;

(11) Agree that the Village of Magdalena will not be obligated to provide fire protection or other municipal service to the users or to persons who reside outside of the village limits of the Village of Magdalena;

(12) Agree to be fully responsible for pumping and delivery of utility service beyond the water meter or sewer tap and that Village of Magdalena will not be obligated to provide more water or water pressure greater than that which is specified in any agreement between the Village and the large utility user or treat any sewerage that could damage or present possible interference with the proper sewerage process such as, but not limited to, dyes, plants, blood, oil, feathers, or product waste solids;

(13) Agree to, periodically at such times mid in such form as may be requested by the Village, provide the Village with a list of all utility users served through the large utility user or utility users association, identified by customer name, address, and phone number, the large users meter number,

description of the property to be served, and such other information as the village may require;

(14) Agree that the large utility user, utility user's association, or other entity receiving utility service, shall, in case of drought, water shortage, or other emergency, be subject to the same curtailment or restriction upon use of water as are other persons and entities who receive water from the water system of the Village of Magdalena.

#### SECTION TWENTY-TWO - ILLEGAL CONNECTION OR EXCAVATION; PENALTY.

It is unlawful for any person, other than an authorized Village employee, to:

- (a) make connection with Village water mains or sewer mains;
- (b) tap a Village water main or sewer main or secondary line between the water main and the water curb cock or between the sewer main and customer property line;
- (c) excavate or lay pipe in or upon any Village street or Village property;
- (d) turn water on or off at the Village curb cock or at the water meter; or
- (e) connect, disconnect, recalibrate, bypass, impede or tamper with a Village water meter.

Any person convicted in Magdalena Municipal Court of violating this section shall be punished as prescribe in Section 25 of this Ordinance.

#### SECTION TWENTY-THREE - DAMAGING OR INTERFERING WITH VILLAGE-OWNED EQUIPMENT PROHIBITED.

##### (a) Water System

(1) Seals placed upon meters, boxes, doors or any other appurtenances or equipment of the utility department must not be removed by persons unauthorized to do so.

(2) It shall be unlawful for any persons to open, close, turn, interfere with, or to attach to or connect with any fire hydrant, stop valve, or stopcock belonging to the Village water system, or to damage any machinery, pipe, tools, valve, manhole, stopcock, meter or meter box, connected with the said water system, any object, material, debris, or structure of any kind so as to prevent tree access to the same at all times, or to deface or disturb, or tie horses or other animals to fire hydrants, or injure any building, structure, or to trespass upon the tank, tank site or other corporate property of the Village water system.

##### (b) Sewer System

(1) Commercial or industrial waste, refuse, or sewage disposal.

No person shall be permitted to discharge commercial or industrial waste, refuse, or sewage into the public sewer system of the Village without first obtaining a permit from the Village; and the Mayor,

before giving his approval, shall ascertain whether or not such connections will be detrimental to the sewer system. No commercial or industrial waste, refuse, or sewage shall be discharged into the public, sewer system until the duly qualified representative or agent of the Village of Magdalena has determined beyond reasonable doubt that such waste, refuse, or sewage do not contain ingredients chemicals or other matter of such a nature that will not permit the proper, efficient, successful and continuous operation and functioning of the sewage disposal works in a continuous and efficient manner.

(2) Depositing Prohibited Material; Tampering with Connections; Creating a Nuisance.

Any persons who deposit or throw into any sewer line, manhole, or drain or inlet any straw, shavings, ashes, rocks, stones, bricks, dead animals, or any kind of rubbish or substance which shall or may cause the drain or sewer line to be choked up or stopped, or

Who shall willfully tamper with the connections leading to the main lateral of the sewer system, or shall shut off any connection properly made, or shall reopen any connections which have been discontinued by the proper authorities, or

Who shall discharge waste water from sink, tub, bathtub, shower, washing machine, or dishwasher onto the ground instead of the sewer system, except gray water systems meeting EP A standards and that do not create a public nuisance, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed Section 25 of this Ordinance, and in addition shall be liable for all costs for repairing the damage to the sewer system caused by such act.

(c) Trash Receptacles - It shall be unlawful for any person(s) to vandalize any Village owned trash receptacle. Such vandalism may include but will not be limited to defacing, breaking or attempting to break any part of said receptacle. Damages will be assessed based on current market value of replacement part or parts.

(d) Fire Hydrants

(1) Fire hydrants are provided for the sole purpose of extinguishing fires and are to be opened and used only by the water and fire departments or for such purposes as may be specifically designated by the water department and then only by a duly authorized agent of the department.

(2) To ensure the safety and efficiency of the fire protection, any person authorized to open the same, for any purpose, will be required to use only an approved spanner wrench, and to replace the caps on the outlets when the same are not in use.

(3) Any person, firm or individual violating the provisions of this subsection 24 subsection shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine as set forth in Section 25.

SECTION TWENTY-FOUR - PENALTY.

Any person convicted of a violation of this Ordinance shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment not to exceed four (4) days, or both fine and imprisonment.

**APPENDIX A**

<b>FEES AND CHARGES</b>	<b>AS OF APRIL 2021</b>	<b>RATE CODE</b>
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METER DEPOSIT (RESIDENTIAL)	<b>\$125.00</b>	<b>METER</b>
METER DEPOSIT (COMMERCIAL)	<b>\$250.00</b>	<b>METER</b>
GARBAGE DEPOSIT (GARBAGE CUSTOMERS ONLY)	<b>\$50.00</b>	
DISCONNECTION FEE	<b>\$25.00</b>	<b>DRF</b>
RECONNECT FEE	<b>\$25.00</b>	<b>DRF</b>
NON-SUFFICIENT FUND (NSF) FEE	<b>\$30.00</b>	<b>NSF</b>
PAST DUE PENALTY	<b>\$10.00</b>	<b>PDP</b>
<b>WATER TAP FEE</b>	<b>\$900.00</b>	<b>WTAP</b>
<b>SEWER TAP FEE</b>	<b>\$1,000.00</b>	<b>STAP</b>
TRASH BIN REPLACEMENT FEE	<b>\$30.00</b>	
WATER METER FIELD TEST FEE	<b>\$25.00</b>	
WATER METER REPLACEMENT FEE	<b>\$150.00</b>	

**RATES WITHIN VILLAGE LIMITS - WATER, ALL CUSTOMERS**

**METER SIZE (INCHES)**

3/4 OR 5/8 (FIRST 1999 GALLONS)	<b>\$26.00</b>	<b>WA</b>
1 (FIRST 1999 GALLONS)	<b>\$28.50</b>	<b>NONE</b>
1.5 (FIRST 1999 GALLONS)	<b>\$31.04</b>	<b>WA1.5</b>
2 (FIRST 1999 GALLONS)	<b>\$35.86</b>	<b>W2"</b>
3 (FIRST 1999 GALLONS)	<b>\$40.79</b>	<b>W3"</b>
4 (FIRST 1999 GALLONS)	<b>\$50.60</b>	<b>W4"</b>
6 (FIRST 1999 GALLONS)	<b>\$60.46</b>	<b>NONE</b>
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	<b>\$3.64</b>	
EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	<b>\$5.14</b>	
EACH 1,000 GALLONS THEREAFTER UP TO 15,000 GALLONS	<b>\$6.50</b>	
EACH 1,000 GALLONS THEREAFTER UP TO 25,000 GALLONS	<b>\$8.58</b>	
EACH 1,000 GALLONS THEREAFTER (EXCLUDING SCHOOL)	<b>\$11.38</b>	
HYDRANT RATE	<b>\$24.00</b>	<b>HYD</b>
SPRINKLER RATE: FIRST 2,000 GALLONS	<b>\$24.00</b>	<b>WSPR</b>

SPRINKLER RATE: EACH 1,000 GALLONS THEREAFTER	\$10.56	WSPR
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### **RATES OUTSIDE VILLAGE LIMITS**

**NOTE: RATES ARE 125% OF RATES WITHIN VILLAGE LIMITS**

#### **METER SIZE (INCHES)**

3/4 OR 5/8 (FIRST 1999 GALLONS)	\$32.51	WA
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	\$4.55	
EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	\$6.43	
EACH 1,000 GALLONS THEREAFTER UP TO 15,000 GALLONS	\$8.13	
EACH 1,000 GALLONS THEREAFTER UP TO 25,000 GALLONS	\$10.73	
EACH 1,000 GALLONS THEREAFTER	\$14.23	

### **SEWER - ALL CUSTOMERS RESIDENTIAL**

**WINTER RATES: SEPTEMBER THRU APRIL**

BASE RATE-FIRST 2,000 GALLONS OF WATER USAGE	\$17.25	SWIN
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	\$1.95	
EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	\$2.28	
EACH 1,000 GALLONS THEREAFTER	\$2.47	

### **SEWER - ALL CUSTOMERS RESIDENTIAL**

**SUMMER RATES: MAY THRU AUGUST**

BASE RATE-FIRST 2,000 GALLONS OF WATER USAGE	\$17.25	SSUM
EACH 1,000 GALLONS THEREAFTER UP TO 5,000 GALLONS	\$1.30	
EACH 1,000 GALLONS THEREAFTER UP TO 8,000 GALLONS	\$1.63	
EACH 1,000 GALLONS THEREAFTER	\$1.69	

### **TRASH**



**SENIOR RATE: (TO QUALIFY ALL RESIDENTS OF THE HOUSEHOLD  
MUST BE 65 YEARS OF AGE OR OVER)**

ONE (1) BIN	\$18.25	GBSN
<b>RESIDENTIAL RATE- IN VILLAGE LIMITS</b>		
ONE (1) BIN/PER MONTH	\$23.90	GBRE
EACH ADDITIONAL BIN/PER MONTH	\$20.70	GBRE
<b>RESIDENTIAL RATE - OUTSIDE VILLAGE LIMITS</b>		
ONE (1) BIN/PER MONTH	\$35.85	GORE
EACH ADDITIONAL BIN/PER MONTH	\$23.90	GORE
<b>BUSINESS/COMMERCIAL RATE (ONE PICK-UP PER WEEK)</b>		
ONE (1) BIN/PER MONTH	\$26.65	GBC2
TWO (2) BINS/PER MONTH	\$34.70	GBC2
EACH ADDITIONAL BIN/PER MONTH	\$22.85	GBC+
<b>BUSINESS/COMMERCIAL RATE (TWO PICK-UPS PER WEEK)</b>		
ONE (1) BIN/PER MONTH	\$31.55	GC2P
TWO (2) BINS/PER MONTH	\$45.60	GC2P
EACH ADDITIONAL BIN/PER MONTH	\$23.90	GC2+
<b>GOVERNMENT/SCHOOLS (TWO PICK-UPS PER WEEK)</b>		
TEN (10) BINS/PER MONTH	\$267.00	GBGS
EACH ADDITIONAL BIN/PER MONTH	\$23.90	GBGS

**ALL WATER/SEWER/TRASH RATES WILL BE ANNUALLY REVIEWED  
AND RAISED IF AN INCREASE IS NECESSARY**

ORDINANCE NO. 1995-1  
VILLAGE OF MAGDALENA

APPENDIX B

DEFINITIONS:

EXISTING SERVICE AREA (ESA)

Water - The ESA for water service covers approximately 1 and 1/2 sections of land (approximately 1,000 acres). Specifically, the area includes the S 1/2 Section 22, N 1/2 Section 27, W 1/2 NW 1/4 Section 26, NW 1/4 NW 1/4 SW 1/4 Section 26, all T2S, R4W. An additional corridor which extends approximately one and one half miles east along Highway 60 is in Section 23, T2S, R4W. The majority of the residents are in the S 1/2 Section 22 and the N 1/2 Section 27. A map of the service area is shown in APPENDIX C.

The ground elevation within the present service area ranges from a high of approximately 6730 at the base of the 200,000 storage tank south of the Village to a low of approximately 6410 at the Trujillo well. The users east of the Trujillo well are at a ground elevation of approximately 6370. ESA does not extend to an elevation higher than the base of the 200,000 storage tank south of the Village.

Sewer - The ESA for sewer service is located throughout most of the developed areas of Magdalena, which covers approximately 1 and 1/2 sections (1,000 acres) of land.

Specifically, the service area includes parts or all of the S 1/2 Section 22, the N 1/2 Section 27, the W 1/2 NW 1/4 Section 26, the NW 1/4 NW 1/4 SW 1/4 Section 26, all in Township 2 South, Range 4 West.

Trash - The proposed service area for solid waste "collection will be the Village of Magdalena limits provided the truck can safely reach the collection point. The feasibility of collection will be determined by the Public Works Director.

TRASH & REFUSE COLLECTION AND DISPOSAL

Acceptable Trash - Any trash generated from normal household activities which is placed in a plastic bag for sanitary purposes and is not listed under the description of unacceptable trash is acceptable. Cardboard does not have to be bagged in plastic to be placed in a Village of Magdalena provided trash bin.

Unacceptable Trash - Trash should not exceed weight limit of particular container: 200 pounds for a 90 gallon container and 150 pounds for a 60 gallon container. No tires, batteries, corrosive or flammable items, toxic, medical or hazardous waste (including hypodermic needles), or building materials will be accepted in the trash bins. For information on the disposal of unacceptable trash,

call the Village utility office.

Note: Acceptable and unacceptable trash definitions could change at any time due to mandates imposed on the Village of Magdalena. For the latest information, please contact the Village utility office.

**PASSED, APPROVED & ADOPTED** by the Village of Magdalena, Board of Trustees on this 22<sup>nd</sup> day of March, 2021

Approved:

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

Attest:

\_\_\_\_\_  
Francesca Gutierrez, Clerk/Treasurer



**RESOLUTION №. 2021-05**

**A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)**

**WHEREAS**, THE BOARD OF TRUSTEES OF THE VILLAGE OF MAGDALENA, COUNTY OF SOCORRO, OF THE STATE OF NEW MEXICO SHALL ENTER INTO A GRANT AGREEMENT WITH THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT, AND

**WHEREAS**, THE AGREEMENT IS IDENTIFIED AS PROJECT NUMBER SAP 20-E2222-STB

**NOW THEREFORE, BE IT RESOLVED** BY THE NAMED APPLICANT THAT:

RICHARD RUMPF, MAYOR, OR SUCCESSOR IS AUTHORIZED TO SIGN THE GRANT AGREEMENT FOR THIS PROJECT, AND

FRANCESCA GUTIERREZ, CLERK/TREASURER, OR SUCCESSOR IS THE OFFICIAL REPRESENTATIVE OR ALTERNATE OFFICIAL REPRESENTATIVE WHO IS AUTHORIZED TO SIGN DISBURSEMENTS AND ALL OTHER DOCUMENTS NECESSARY TO FULFILL THE GRANT AGREEMENT AND THE REQUIREMENTS OF SAP 20-E2222-STB (\$210,000.00) TO PURCHASE A GARBAGE TRUCK AND TO ACT AS THE PROJECT CONTACT, AND

CARLEEN GOMEZ, DEPUTY CLERK, OR SUCCESSOR IS THE CAPITAL PROJECTS MONITORING SYSTEM (CPMS) CONTACT WHO IS AUTHORIZED TO UPDATE CPMS DATABASE ON A MONTHLY BASIS.

**PASSED, APPROVED, AND ADOPTED: THIS 22<sup>ND</sup> DAY OF MARCH, 2021.**

\_\_\_\_\_  
**RICHARD RUMPF, MAYOR – VILLAGE OF MAGDALENA**

\_\_\_\_\_  
**DATE**

(SEAL)

**ATTEST:**

\_\_\_\_\_  
**FRANCESCA GUTIERREZ, CLERK/TREASURER**

Prepared by:  
 Pat Torres  
 LONESTAR FREIGHTLINER  
 GROUP, LLC  
 12901 US HIGHWAY 66 WEST  
 FRONTAGE ROAD  
 ALBUQUERQUE, NM 87121  
 Phone: 505-833-1000

## Q U O T A T I O N

### M2 106 CONVENTIONAL CHASSIS

SET BACK AXLE - TRUCK  
 DD8 7.7L 6 CYL DUAL STAGE 330 HP @ 2200 RPM, 2600  
 GOV RPM, 1000 LB-FT @ 1200 RPM  
 ALLISON 3000 RDS AUTOMATIC TRANSMISSION WITH  
 PTO PROVISION  
 RS-21-160 21,000# R-SERIES SINGLE REAR AXLE  
 21,000# 52 INCH VARIABLE RATE MULTI-LEAF SPRING  
 REAR SUSPENSION WITH LEAF SPRING  
 HELPER

DETROIT DA-F-14.7-3 14,700# FF1 71.5 KPI/3.74 DROP  
 SINGLE FRONT AXLE  
 14,600# TAPERLEAF FRONT SUSPENSION  
 106 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL  
 CAB  
 5750MM (226 INCH) WHEELBASE  
 11/32X3-1/2X10-15/16 INCH STEEL FRAME  
 (8.73MMX277.8MM/0.344X10.94 INCH) 120KSI  
 1200MM (47 INCH) REAR FRAME OVERHANG

			PER UNIT	TOTAL
VEHICLE PRICE	TOTAL # OF UNITS (1)	\$	84,495 \$	84,495
EXTENDED WARRANTY		\$	4,530 \$	4,530
DEALER INSTALLED OPTIONS		\$	0 \$	0
CUSTOMER PRICE BEFORE TAX		\$	89,025 \$	89,025
<b>TAXES AND FEES</b>				
TAXES AND FEES		\$	0 \$	0
OTHER CHARGES		\$	158,035 \$	158,035
<b>TRADE-IN</b>				
TRADE-IN ALLOWANCE		\$	(0) \$	(0)

BALANCE DUE	(LOCAL CURRENCY)	\$	247,060	\$	247,060
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#### COMMENTS:

Projected delivery on \_\_\_ / \_\_\_ / \_\_\_ provided the order is received before \_\_\_ / \_\_\_ / \_\_\_.

#### APPROVAL:

Please indicate your acceptance of this quotation by signing below:

Customer: X \_\_\_\_\_ Date: \_\_\_ / \_\_\_ / \_\_\_.



**STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT  
CAPITAL APPROPRIATION PROJECT  
SC MAGDALENA GARBAGE TRUCK PRCHS & EQUIP  
SAP 20-E2222-STB**

**THIS AGREEMENT** is made and entered into as of this [\_\_\_\_] day of [\_\_\_\_], 20[\_\_\_\_], by and between the New Mexico Environment Department hereinafter called the “Department” or “NMED”, and Village of Magdalena hereinafter called the “Grantee”. This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2020, Chapter 81, Section 26, Paragraph 123, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

**AGREEMENT**

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

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

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

**SAP 20-E2222-STB (\$210,000.00) APPROPRIATION REVERSION DATE: June 30, 2023  
Laws of 2020 Chapter 81, Section 26, Paragraph 123, Two Hundred Ten Thousand Dollars (\$210,000.00):**

to purchase and equip garbage trucks for Magdalena in Socorro county

The Grantee’s total reimbursements shall not exceed Two Hundred Ten Thousand Dollars (\$210,000.00) minus the allocation for Art in Public Places<sup>1</sup>, if applicable, No Dollars (\$0.00) which equals Two Hundred Ten Thousand Dollars (\$210,000.00) (the “Adjusted Appropriation Amount”).

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



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

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

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

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

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

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

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

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

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

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

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

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

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

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

Grantee: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Please provide this information in the Resolution and Signature page; this page does NOT need to be completed.

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

Grantee: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

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

Department: New Mexico Environment Department  
Name: Paulette Ortiz  
Title: Project Administrator  
Address: Construction Program Bureau  
NMED, Harold Runnels Building  
P.O. Box 5469  
Santa Fe, NM 87502

Email: paulette.ortiz@state.nm.us  
Telephone: 505-670-3583

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

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

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the

Department. It shall terminate on June 30, 2023 the Reversion Date unless Terminated Before Reversion Date (“Early Termination”) pursuant to Article V herein.

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

## **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VII. AMENDMENT**

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

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

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

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

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

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

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

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

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

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

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

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

**C. Deadlines**

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

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

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

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

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

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

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

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

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

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid,



selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES (Applicable only if the appropriation is funded by Severance Tax Bonds or General Obligations Bonds).**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee’s sole and absolute responsibility to determine through SBOF

staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

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

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

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Authorization Page

SC MAGDALENA GARBAGE TRUCK PRCHS & EQUIP SAP 20-E2222-STB

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

**GRANTEE**

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

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

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

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

\_\_\_\_\_  
Date

**NEW MEXICO ENVIRONMENT DEPARTMENT**

\_\_\_\_\_  
Judith L, Kahl, P.E., Bureau Chief, NMED Construction Programs Bureau  
Signed pursuant to September 14, 2020 Secretary of Environment Delegation Order

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

I. Grantee Information		II. Payment Computation	
A. Grantee: Village of Magdalena		A. Payment Request No.	
B. Address:		B. Grant Amount: \$210,000.00	
		C. AIPP Amount (if Applicable): \$0.00	
		D. Funds Requested to Date:	
C. Phone No:		E. Amount Requested this Payment:	
D. Grant No: SAP 20-E2222-STB		F. Reversion Amount (if Applicable):	
E. Project Title: SC MAGDALENA GARBAGE TRUCK PRCHS & EQUIP		G. Grant Balance:	
F. Grant Expiration Date: 6/30/2023		H. __GF __GOB __STB (attach wire if first draw)	
		I. __Final Request for Payment (if Applicable)	
III. Fiscal Year:			
(The State of NM Fiscal Year is July 1, 20XX through June 30 20XX of the following year)			
IV. <input style="width: 40px; height: 20px;" type="checkbox"/>		<b>Reporting Certification:</b> I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.	
V. <input style="width: 40px; height: 20px;" type="checkbox"/>		<b>Compliance Certification:</b> Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.	
Grantee Fiscal Officer or Fiscal Agent (if Applicable):		Grantee Representative:	
Printed Name:		Printed Name:	
Date:		Date:	
(State Agency Use Only)			
Vendor Code			
I certify that the State Agency financial and vendor file information agree with the above submitted information.			
Division (SAP PA) Fiscal Officer/ Date:		Division (CPB) Project Manager/Date:	

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

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

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

TO: Department Representative: \_Sara Rhoton

FROM: Grantee: Village of Magdalena

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

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: SAP 20-E2222-STB

Grant Termination Date: June 30, 2023

As the designated representative of the Department for Grant Agreement number SAP 20-E2222-STB entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following Third-Party obligation executed, in writing, by the Third-Party's authorized representative:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

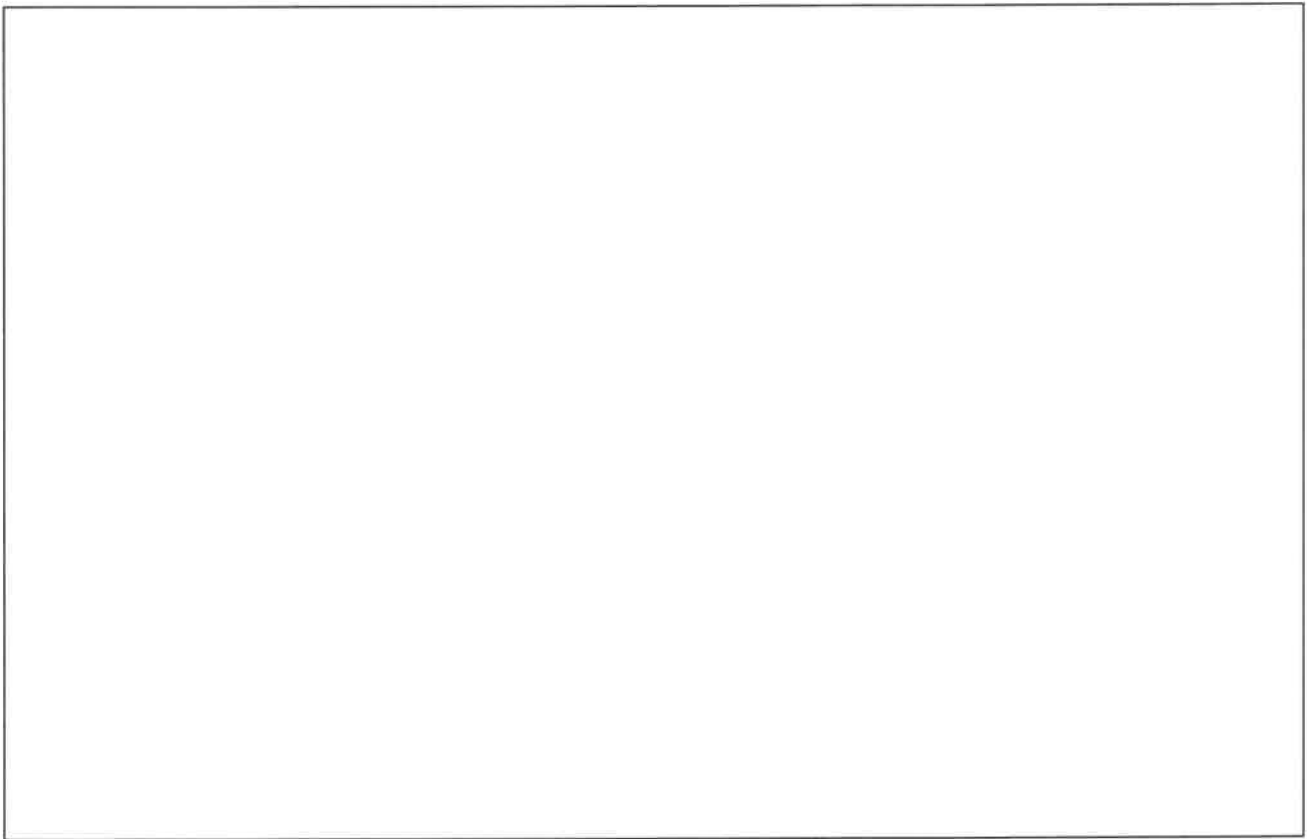
Signature: [\_\_\_\_\_]

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

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

**NMED ATTACHMENT A**  
**NEW MEXICO ENVIRONMENT DEPARTMENT**  
**CONSTRUCTION PROGRAMS BUREAU**  
**PROJECT DESCRIPTION**

**Name of Grantee:** Village of Magdalena  
**Project Number:** SAP 20-E2222-STB



**X**

**Official Representative/Date**

**X**

**NMED Project Manager Approval/Date**

**NMED ATTACHMENT B – NMENV TECHNICAL REQUIREMENTS  
TO  
STATE OF NEW MEXICO  
CAPITAL APPROPRIATION FUND AGREEMENT**

**REVIEW**

Upon execution of the agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

- A. The Grantee must submit a detailed project description to NMED Construction Programs Bureau prior to committing to expenditures from these funds. The detailed description will be provided on the Attachment A form. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee prior to this agreement, that are related to the project, for review and, if appropriate, approval.
- B. If these grant funds are to be used for engineering and/or other professional services, the Grantee must submit documentation regarding the hiring process to be used and the Request for Proposals (RFP), if applicable, to NMED for review and approval **prior to** selecting engineering and/or other professional services. An RFP for engineering services and/or other professional services must be performed in compliance with the New Mexico Procurement Code [Sections 13-1-21 et seq. NMSA 1978]. If, for any one circumstance, engineering fees will exceed \$60,000, excluding gross receipt taxes, the Grantee is also required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the RFP package. (PTAB: phone (505) 888-6161 and e-mail [ptab@acecnm.org](mailto:ptab@acecnm.org).)
- C. If these grant funds are to be used for engineering and/or other professional services, the Grantee must submit a draft of any engineering agreement and/or other professional services contract, or a letter certifying that the Grantee's staff will be used for design, to NMED for review and approval **prior to** executing the agreement/contract or using Grantee's staff. The required engineering agreement format is the "Publicly Funded Project" form prepared by NMED and posted on the website at [www.nmenv.state.nm.us/cpb/cpbtop.html](http://www.nmenv.state.nm.us/cpb/cpbtop.html).
- D. A preliminary engineering report (PER) or study by a registered New Mexico Professional Engineer may be required. If a PER or study is to be prepared, the Grantee and their consultant shall meet with NMED before starting any work for a "scoping" meeting to fully discuss the scope and extent of the PER. The consultant shall present their preliminary outline for the PER, including the alternatives to be considered. The Grantee must submit the final PER and/or study to NMED for review and approval before preparation of plans and specifications. The purpose of the PER and/or study is to analyze and choose the most technically feasible and cost effective solution for the project. The PER must follow USDA RUS Bulletin 1780-2.
- E. Grantee agrees not to start the preparation of plans and specifications until NMED approval of the PER, study, or waiver of the report requirement has been received.
- F. If the grant funds are to be used for engineering design or for construction, the Grantee must submit all plans, specifications, and any addenda for this project (prepared by a registered New Mexico Professional Engineer) to NMED for review and approval **before** the project is advertised for construction bids.



- G. The Grantee must submit all work related to easements, rights-of-ways, other property rights, and financing provisions associated with the project to NMED for review prior to advertising for construction. A site certificate certifying that all necessary easements and/or property upon or through which the project is being constructed have been obtained must be submitted prior to the advertisement for bid of the project. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor. The Grantee must submit the recommendation of award, certified bid tabulation, a copy of bid bond for the selected contractor and evidence of full project financing to NMED for review and approval prior to awarding the contract. Grantee shall not award the contract until NMED has concurred in writing with the award. Competitive bidding, in accordance with applicable state laws (including local wage determinations as provided for in Section 13-4-11 NMSA 1978), will be used for awarding construction contracts. Contracts will be awarded to the responsive, responsible bidder who submits the lowest acceptable bid, or as provided for by State Law.
- H. Following NMED approval of the proposed award, the Grantee will submit the notice of the award and the minutes of the meeting in which the award was made, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to contractor to proceed to NMED for review. The selected contractor will be required to post a performance and payment bond in accordance with requirements of Section 13-4-18 NMSA 1978.
- I. The selected contractor will submit a construction schedule to the Grantee and NMED if requested at the pre-construction conference with a copy to NMED. The Grantee will submit all modifications to plans and contract by change orders to the NMED project manager promptly for review and approval prior to implementation of such modification or change. The decision by NMED will be rendered promptly in writing to the Grantee. In cases necessitating immediate action, a verbal decision will be rendered by NMED and followed by a written confirmation to the Grantee.
- J. The Grantee will provide a full-time construction inspector during construction of the project. The Grantee will be required to submit the inspector's résumé to NMED for review and approval. All daily inspection reports shall be made available to the NMED Project Manager upon request.
- K. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans, but will be a general NMED review as described in Article 2 below.
- L. If applicable, the Grantee (or the system owner) will employ qualified utility operators and will comply with all provisions of the New Mexico Utility Operators Certification Act, Section 61-33-1 et seq. NMSA 1978.
- M. If the grant funds are to be used for construction of wastewater collection lines or water distribution lines, the Grantee will assure NMED that the existing population will connect to the collection system or distribution system within reasonable time after project completion. This will be accomplished by adoption and annual review of an ordinance and user charge system or other legal documents or other official act requiring such connection to the system, to the extent permitted by law.
- N. NMED will reimburse the grantee its actual costs when NMED determines, in its sole discretion, that expenditures were appropriate under the terms of the Agreement and that the expenditures were properly documented.

## **NMED OVERSIGHT**

NMED inspection, review and approval are only for purposes of compliance with applicable state grant requirements, procedures, statutes and regulations. NMED approval will not be interpreted as any warranty or guarantee of any kind. Approval of plans and design of the project means only that plans are complete and in compliance with applicable state grant requirements, procedures and regulations. NMED will bring to the Grantee's attention, any obvious defects in the project's design, materials or workmanship, but all such defects and their correction will be the responsibility of the Grantee and its contractors and consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and consultants will remain responsible for the completion and success of the project. Approval does not relieve the owner or engineer of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

## **CLOSEOUT**

- O. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and NMED.
- P. If the grant funds are to be used for preparation of a PER, a study, or plans and specifications, final payment will be made after approval by NMED of the PER, study, or plans and specifications. Payments do not constitute approval of any of these documents.
- Q. If the grant funds are to be used for purchase of equipment, final payment will be made after approval by NMED of receipt of equipment title and appraisal reports for used equipment.
- R. If the grant funds are to be used for construction, final payment will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
  - i. Operation and maintenance manuals or a letter from the owner certifying receipt and acceptance of the operation and maintenance manuals;
  - ii. A final reimbursement request including the final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee;
  - iii. A certificate of substantial completion including punch list items;
  - iv. A letter certifying project acceptance by the Grantee and the Grantee's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED for final review and approval;
  - v. Certification letter by the Grantee that the Labor Standards Contract Provisions have been met;
  - vi. Record drawings prepared by the Grantee's project engineer or a letter from the owner certifying receipt and acceptance of the record drawings;
  - vii. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish

receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied;

viii. A written consent of the surety, if any, to final payment; and

ix. Grantee's ledger sheets including all payments made by the Grantee may be requested with the final reimbursement request and before the final reimbursement request can be processed by NMED.

With the exception of easements (See Article 1.G above), when real property is acquired by the Grantee, either through purchase or donation as a part of this project and within the project period, the Grantee will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser who was selected through applicable procurement procedures. These documents must be reviewed and approved by NMED **prior to** the acquisition of any real property. After real property acquisition, the Grantee will make available to NMED all documents of title pertaining to the acquired property and all easements or rights-of-way necessary for the completion of work under this grant agreement.

NMED Attachment C  
NMED Contact Information Sheet  
Project Number SAP 20-E2222-STB  
Grantee Village of Magdalena

Project Manager: Sara Rhoton  
Project Manager Address: 121 Tijeras Ave NE, Ste 1000  
Albuquerque, NM 87102  
Phone: 505-629-7541  
Email: sara.rhoton@state.nm.us

Project Administration: Paulette Ortiz  
Project Admin Address: 1190 St. Francis Drive S-2072  
Santa Fe, NM 87502  
Phone: 505-670-3583  
Email: paulette.ortiz@state.nm.us

For General Assistance, please call 505-827-2806 and ask for “Special Appropriations” or email:  
[NMENV-cpbsap@state.nm.us](mailto:NMENV-cpbsap@state.nm.us)

**NEW MEXICO ENVIRONMENT DEPARTMENT  
CONSTRUCTION PROGRAMS BUREAU**

**NMED ATTACHMENT D DISBURSEMENT REQUEST  
SPECIAL APPROPRIATIONS PROGRAM (SAP)**

A. NAME OF ENTITY

B. PROJECT NUMBER

C. DISBURSEMENT REQUEST NUMBER

D. GRANT AMOUNT

	PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees							\$ -	\$ -
Other Professional							\$ -	\$ -
Service Fees							\$ -	\$ -
Inspection Fees							\$ -	\$ -
Property Acquisition							\$ -	\$ -
Construction Cost							\$ -	\$ -
Planning Cost							\$ -	\$ -
Equipment							\$ -	\$ -
Other Costs (specify)							\$ -	\$ -
Contingendes							\$ -	\$ -
<b>TOTAL</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<p>Article IX.A. (ii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.</p>								
<p><b>Certification:</b> Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.</p>								

Signature of Authorized Official

Typed or Printed Name:

Phone:

Date:

X

NMED Attachment E  
New Mexico Environment Department (NMED)  
Capital Appropriations Certification Document  
Article IX. A. (ii) and (iii)  
Project SAP 20-E2222-STB  
Grantee Village of Magdalena  
Payment Request No \_\_\_\_\_

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

---

Official Representative, Signed Name, Printed Name, Date

**A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)**  
**Resolution Number**

**Whereas**, the Board of Directors / Council / Commission of Community / Utility of County Name County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

**Whereas**, the Agreement is identified as Project Number SAP

**NOW THEREFORE, BE IT RESOLVED** by the named applicant that:

Name, Mayor/ Chairperson / Director / Officer, or successor is authorized to sign the Grant Agreement for this project, and

Authorized Officer Name, Authorized Officer Title, or successor is the OFFICAL REPRESENTATIVES or ALTERNATE OFFICAL REPRESENTATIVE who is authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements (Project Description, Disbursements and Notice of Obligations (NOO)) and to act as the project contact (*may have more than one*), and

Name of Authorized Agent or Employee, Title, or successor is the Capital Projects Monitoring System (CPMS) contact who is authorized to update the CPMS database on a monthly basis. (*optional*)

**PASSED, APPROVED, AND ADOPTED:** \_\_\_\_\_.

**Name, Mayor / Chairperson / Director / Officer, Title, Community / Utility**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

(SEAL)

ATTEST:

\_\_\_\_\_  
(Municipal Clerk)

**Name of Grantee:** \_\_\_\_\_ **Project Number:** \_\_\_\_\_

**Current Authorized Signatures** (submit with Signature Resolution; update when necessary)

<b>Authorized to Sign Grant Agreement</b>	
Name	
Title	
Signature	
Address	
Email	
Phone	
<b>Authorized Officer/Official Representative; To sign Disbursement Requests and All Other Documents</b>	
Name	
Title	
Signature	
Address	
Email	
Phone	
<b>Agent or Employee that will make Monthly CPMS Updates</b>	
Name	
Title	
Signature	<b>Signature Not Required</b>
Address	
Email	
Phone	



**STATE OF NEW MEXICO  
VILLAGE OF MAGDALENA  
BOARD OF TRUSTEES  
BUDGET ADJUSTMENT RESOLUTION NO. 2021-04  
FY 2020-2021**

**WHEREAS**, the Board of Trustees of the Village of Magdalena met in regular session on **March 22, 2021** and proposes to make certain budget transfer(s), increase(s), or decrease(s) and

**WHEREAS**, said budget was adjusted based on need and through cooperation with all user departments, elected officials, and other department supervisors, **as summarized on the attached sheet**; and

**WHEREAS**, the official meeting for review of said documents was duly advertised in compliance with the State Open Meetings Act; and

**WHEREAS**, it is the majority opinion of this Board that the adjusted budget meets the requirements as currently determined.

**NOW THEREFORE, BE IT HEREBY RESOLVED**, that the Governing Body of the Village of Magdalena, State of New Mexico, hereby adopts the budget adjustment hereinabove described and attached and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

**PASSED, ADOPTED and APPROVED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Attest:**

\_\_\_\_\_  
**Francesca Gutierrez, Clerk/Treasurer**

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

(seal)



**STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT  
CAPITAL APPROPRIATION PROJECT  
SC MAGDALENA GARBAGE TRUCK PRCHS & EQUIP  
SAP 20-E2222-STB**

**THIS AGREEMENT** is made and entered into as of this [\_\_\_\_] day of [\_\_\_\_], 20[\_\_\_\_], by and between the New Mexico Environment Department hereinafter called the "Department" or "NMED", and Village of Magdalena hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2020, Chapter 81, Section 26, Paragraph 123, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

**AGREEMENT**

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

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

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

**SAP 20-E2222-STB (\$210,000.00) APPROPRIATION REVERSION DATE: June 30, 2023  
Laws of 2020 Chapter 81, Section 26, Paragraph 123, Two Hundred Ten Thousand Dollars (\$210,000.00):**

**to purchase and equip garbage trucks for Magdalena in Socorro county**

The Grantee's total reimbursements shall not exceed Two Hundred Ten Thousand Dollars (\$210,000.00) minus the allocation for Art in Public Places<sup>1</sup>, if applicable, No Dollars (\$0.00) which equals Two Hundred Ten Thousand Dollars (\$210,000.00) (the "Adjusted Appropriation Amount").

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

Prepared by:  
 Pat Torres  
 LONESTAR FREIGHTLINER  
 GROUP, LLC  
 12801 US HIGHWAY 86 WEST  
 FRONTAGE ROAD  
 ALBUQUERQUE, NM 87121  
 Phone: 505-833-1000

## Q U O T A T I O N

### M2 106 CONVENTIONAL CHASSIS

SET BACK AXLE - TRUCK

DD8 7.7L 8 CYL DUAL STAGE 330 HP @ 2200 RPM, 2600  
 GOV RPM, 1000 LB-FT @ 1200 RPM

ALLISON 3000 RDS AUTOMATIC TRANSMISSION WITH  
 PTO PROVISION

RS-21-160 21,000# R-SERIES SINGLE REAR AXLE

21,000# 52 INCH VARIABLE RATE MULTI-LEAF SPRING  
 REAR SUSPENSION WITH LEAF SPRING  
 HELPER

DETROIT DA-F-14.7-3 14,700# FF1 71.5 KPI/3.74 DROP  
 SINGLE FRONT AXLE

14,600# TAPERLEAF FRONT SUSPENSION

108 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL  
 CAB

5750MM (226 INCH) WHEELBASE

11/32X3-1/2X10-15/16 INCH STEEL FRAME

(8.73MMX277.8MM/0.344X10.94 INCH) 120KSI

1200MM (47 INCH) REAR FRAME OVERHANG

		PER UNIT	TOTAL
VEHICLE PRICE	TOTAL # OF UNITS (1)	\$ 84,495	\$ 84,495
EXTENDED WARRANTY		\$ 4,530	\$ 4,530
DEALER INSTALLED OPTIONS		\$ 0	\$ 0
CUSTOMER PRICE BEFORE TAX		\$ 89,025	\$ 89,025

### TAXES AND FEES

TAXES AND FEES	\$ 0	\$ 0
OTHER CHARGES	\$ 158,035	\$ 158,035

### TRADE-IN

TRADE-IN ALLOWANCE	\$ (0)	\$ (0)
--------------------	--------	--------

BALANCE DUE	(LOCAL CURRENCY)	\$ 247,060	\$ 247,060
-------------	------------------	------------	------------

### COMMENTS:

Projected delivery on \_\_\_ / \_\_\_ / \_\_\_ provided the order is received before \_\_\_ / \_\_\_ / \_\_\_.

247,060

### APPROVAL:

Please indicate your acceptance of this quotation by signing below:

Customer: X \_\_\_\_\_ Date: \_\_\_ / \_\_\_ / \_\_\_



## REVENUE/EXPENDITURE REPORT

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2/18/2021

12:36 am

Village of Magdalena

For the Period: 7/1/2020 to 1/31/2021

	Original Bud.	Amended Bud.	Annual Actual	CURR MTH	Encumb. YTD	UnencBal	% Bud
<b>Fund: 101 - GENERAL FUND</b>							
Revenues							
Dept: 00							
41000 PROPERTY TAX (CURRENT & PRIOR)	8,369.00	8,060.00	5,987.91	2,642.38	0.00	2,072.09	74.3
41100 FRANCHISE FEES	15,947.00	15,947.00	7,184.42	1,001.53	0.00	8,762.58	45.1
41150 GROSS RECEIPTS-LOCAL OPTION	96,242.00	96,242.00	47,403.78	7,501.35	0.00	48,838.22	49.3
41180 GROSS RECEIPTS-HOUSE BILL 6	0.00	19,000.00	10,331.76	1,721.96	0.00	8,668.24	54.4
41905 CAPITAL CREDITS	0.00	0.00	982.43	0.00	0.00	-982.43	0.0
41910 CONTRIBUTIONS & DONATIONS	0.00	0.00	500.00	0.00	0.00	-500.00	0.0
41925 SALES-OTHER	0.00	0.00	10.00	0.00	0.00	-10.00	0.0
41930 MISCELLANEOUS INCOME	0.00	0.00	6.25	1.00	0.00	-6.25	0.0
41935 REIMBURSEMENTS & REFUNDS	0.00	0.00	43.95	0.00	0.00	-43.95	0.0
42100 GROSS RECEIPTS-STATE SHARE	86,797.00	86,797.00	46,716.14	7,388.78	0.00	40,080.86	53.8
42200 GAS (COMBINED FUEL) TAXES	11,637.00	11,637.00	8,252.47	1,347.75	0.00	3,384.53	70.9
42300 MOTOR VEHICLE	2,146.00	2,146.00	1,373.39	180.83	0.00	772.61	64.0
42500 GRANTS - STATE	0.00	320,000.00	291,154.59	24,393.00	0.00	28,845.41	91.0
44000 SMALL CITIES ASSISTANCE	180,000.00	180,000.00	206,000.00	0.00	0.00	180,000.00	0.0
45100 ANIMAL LICENSES	54.00	54.00	0.00	0.00	0.00	54.00	0.0
45200 BUSINESS LICENSES	2,508.00	2,508.00	1,550.00	1,225.00	0.00	958.00	61.8
46110 AIRPORT HANGER RENTALS	1,900.00	1,900.00	1,200.00	1,200.00	0.00	700.00	63.2
46125 NOTARY FEE SERVICE	1,002.00	1,002.00	620.00	65.00	0.00	382.00	61.9
46126 CONVENIENCE FEE	246.00	246.00	130.00	0.00	0.00	116.00	52.8
46130 POLICE SERVICES-SPECIAL	312.00	312.00	70.00	0.00	0.00	242.00	22.4
46140 PRINTING, COPYING AND FAX	341.00	341.00	308.00	63.00	0.00	33.00	90.3
46150 RENTAL OF PUBLIC FACILITIES	2,400.00	2,400.00	1,000.00	500.00	0.00	1,400.00	41.7
47001 COURT FINES	13,390.00	13,390.00	3,132.00	131.00	0.00	10,258.00	23.4
48000 INTEREST INCOME	268.00	268.00	77.21	10.22	0.00	190.79	28.8
Dept: 00	423,559.00	762,250.00	428,034.30	49,372.80	0.00	334,215.70	56.2
Revenues	423,559.00	762,250.00	428,034.30	49,372.80	0.00	334,215.70	56.2
Expenditures							
Dept: 01 EXECUTIVE /LEGISLATIVE							
50010 ELECTED OFFICIAL SALARIES	6,000.00	6,000.00	3,500.00	500.00	0.00	2,500.00	58.3
51010 FICA MEDICARE	87.00	87.00	50.75	7.25	0.00	36.25	58.3
51020 FICA REGULAR	372.00	372.00	217.00	31.00	0.00	155.00	58.3
51090 WORKERS COMP INSURANCE PREM	0.00	0.00	81.64	0.00	0.00	-81.64	0.0
52030 BOOKS, PERIODICALS & SOFTWARE	719.00	719.00	0.00	0.00	0.00	719.00	0.0
52060 EMPLOYEE TRAINING	1,482.00	1,482.00	0.00	0.00	350.00	1,132.00	23.6
52080 LIABILITY & PROPERTY INSURANCE	409.00	409.00	0.00	0.00	0.00	409.00	0.0
52090 EMPLOYEE TRAVEL	920.00	920.00	0.00	0.00	0.00	920.00	0.0
52110 PRINTING AND PUBLISHING	128.00	128.00	0.00	0.00	0.00	128.00	0.0
53050 FUEL-GASOLINE AND DIESEL	991.00	991.00	400.40	74.04	644.78	-54.18	105.5
53110 SUPPLIES-OFFICE SUPPLIES	224.00	224.00	0.00	0.00	0.00	224.00	0.0
53120 SUPPLIES-OTHER	1,115.00	1,115.00	1,108.31	887.81	0.00	6.69	99.4
53150 SUPPLIES-VEHICLES	496.00	496.00	0.00	0.00	0.00	496.00	0.0
53160 TELEPHONE, CELL AND INTERNET	1,253.00	1,253.00	741.15	90.65	511.85	0.00	100.0
55050 REPAIR & MAINT-VEHICLES	58.00	58.00	27.96	0.00	0.00	30.04	48.2
58200 OTHER PROFESSIONAL SERVICES	2,298.00	2,298.00	1,464.00	252.00	840.00	-6.00	100.3
EXECUTIVE /LEGISLATIVE	16,552.00	16,552.00	7,591.21	1,842.75	2,346.63	6,614.16	60.0
Dept: 02 JUDICIAL							
50010 ELECTED OFFICIAL SALARIES	2,400.00	2,400.00	1,400.00	200.00	0.00	1,000.00	58.3
50020 FULL TIME EMPLOYEE WAGES	11,571.00	9,171.00	5,271.05	705.60	0.00	3,899.95	57.5
51010 FICA MEDICARE	168.00	168.00	96.72	13.12	0.00	71.28	57.6
51020 FICA REGULAR	717.00	718.00	413.57	56.13	0.00	304.43	57.6
51030 GROUP HEALTHCARE INSURANCE	2,344.00	1,745.00	1,017.50	145.36	0.00	727.50	58.3
51050 PERA RETIREMENT CONTRIBUTIONS	885.00	886.00	510.37	69.29	0.00	375.63	57.6
51070 UNEMPLOYMENT COMP INSURANCE	37.00	37.00	9.60	2.32	0.00	27.40	25.9
51080 WORKERS COMP FEE ASSESSMENT	10.00	10.00	1.15	0.00	0.00	8.85	11.5
51090 WORKERS COMP INSURANCE PREM	0.00	0.00	288.07	0.00	0.00	-288.07	0.0
52030 BOOKS, PERIODICALS & SOFTWARE	288.00	288.00	0.00	0.00	0.00	288.00	0.0
52050 DUES, SUBSCRIPT & MEMBERSHIPS	252.00	252.00	210.00	0.00	0.00	42.00	83.3

## REVENUE/EXPENDITURE REPORT

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2/18/2021

12:36 am

Village of Magdalena

For the Period: 7/1/2020 to 1/31/2021	Original Bud.	Amended Bud.	Annual Actual	CURR MTH	Encumb. YTD	UnencBal	% Bud
Fund: 101 - GENERAL FUND							
Expenditures							
Dept: 15 OTHER - MISCELLANEOUS							
90001 OPERATING TRANSFER-IN	0.00	-341.00	-15.00	0.00	0.00	-326.00	4.4
90002 OPERATING TRANSFER-OUT	38,942.00	39,268.00	59,268.00	10,000.00	0.00	29,268.00	25.5
OTHER - MISCELLANEOUS	38,942.00	38,927.00	9,985.00	0.00	0.00	28,942.00	25.7
Expenditures	548,813.00	862,039.00	597,821.33	92,621.29	51,607.34	212,610.33	75.3
Net Effect for GENERAL FUND	-125,254.00	-99,789.00	-169,787.03	-43,248.49	51,607.34	121,605.37	221.9
Change in Fund Balance:			-169,787.03				

REVENUE/EXPENDITURE REPORT

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2/18/2021

12:36 am

Village of Magdalena

For the Period: 7/1/2020 to 1/31/2021

Original Bud.

Amended Bud.

Annual Actual

CURR MTH

Encumb. YTD

UnencBal % Bud

**Fund: 502 - SOLID WASTE FUND**

Revenues

Dept: 00

41925 SALES-OTHER	0.00	0.00	200.00	0.00	0.00	-200.00	0.0
46002 UTILITY SERVICE-SOLID WASTE	139,677.00	139,677.00	75,377.29	10,382.39	0.00	64,299.71	54.0

Dept: 00

	139,677.00	139,677.00	75,577.29	10,382.39	0.00	64,099.71	54.1
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Revenues

	139,677.00	139,677.00	75,577.29	10,382.39	0.00	64,099.71	54.1
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Expenditures

Dept: 00

50020 FULL TIME EMPLOYEE WAGES	65,213.00	65,733.00	22,449.32	3,157.18	0.00	43,283.68	34.2
50050 OVERTIME WAGES	692.00	692.00	196.35	88.56	0.00	495.65	28.4
51010 FICA MEDICARE	946.00	954.00	328.37	47.04	0.00	625.63	34.4
51020 FICA REGULAR	4,043.00	4,076.00	1,404.06	201.22	0.00	2,671.94	34.4
51030 GROUP HEALTHCARE INSURANCE	9,376.00	6,977.00	3,782.56	583.19	0.00	3,194.44	54.2
51050 PERA RETIREMENT CONTRIBUTIONS	4,989.00	5,029.00	1,694.18	236.47	0.00	3,334.82	33.7
51070 UNEMPLOYMENT COMP INSURANCE	151.00	151.00	62.94	10.68	0.00	88.06	41.7
51080 WORKERS COMP FEE ASSESSMENT	8.00	8.00	6.20	0.00	0.00	1.80	77.5
51090 WORKERS COMP INSURANCE PREM	3,503.00	3,503.00	934.41	0.00	0.00	2,568.59	26.7
52010 ADVERTISING & PROMOTION	35.00	35.00	0.00	0.00	0.00	35.00	0.0
52030 BOOKS, PERIODICALS & SOFTWARE	873.00	873.00	543.18	0.00	118.91	210.91	75.8
52080 LIABILITY & PROPERTY INSURANCE	5,442.00	5,442.00	6,909.85	246.00	0.00	-1,467.85	127.0
52100 POSTAGE AND MAIL SERVICES	1,027.00	1,027.00	516.02	23.34	117.69	393.29	61.7
53050 FUEL-GASOLINE AND DIESEL	6,618.00	6,618.00	3,124.49	494.07	3,613.51	-120.00	101.8
53080 SUPPLIES-BUILDING & STRUCTURES	176.00	176.00	0.00	0.00	100.00	76.00	56.8
53110 SUPPLIES-OFFICE SUPPLIES	0.00	0.00	168.20	0.00	0.00	-168.20	0.0
53120 SUPPLIES-OTHER	117.00	117.00	188.49	0.00	9.75	-81.24	169.4
53130 SUPPLIES-SAFETY EQUIPMENT	62.00	62.00	0.00	0.00	0.00	62.00	0.0
53140 SUPPLIES-UNIFORM & LINEN	384.00	384.00	394.91	311.71	192.29	-203.20	152.9
53150 SUPPLIES-VEHICLES	2,238.00	2,238.00	230.40	0.00	0.00	2,007.60	10.3
53160 TELEPHONE, CELL AND INTERNET	714.00	714.00	350.92	46.78	363.08	0.00	100.0
53170 UTILITIES-ELECTRIC AND PROPANE	627.00	627.00	317.46	93.56	132.54	177.00	71.8
55020 REPAIR & MAINT-EQUIP & MACH	4,688.00	4,688.00	2,774.14	137.80	0.00	1,913.86	59.2
55050 REPAIR & MAINT-VEHICLES	11,184.00	11,184.00	570.76	102.75	3,008.04	7,605.20	32.0
57310 RENT/LEASE-EQUIP AND MACHINE	1,572.00	1,572.00	0.00	0.00	0.00	1,572.00	0.0
57320 RENT/LEASE-VEHICLES	0.00	1,536.00	384.09	0.00	0.00	1,151.91	25.0
58180 MEDICAL, PYCH, DRUG TESTING	0.00	0.00	207.00	207.00	0.00	-207.00	0.0
58200 OTHER PROFESSIONAL SERVICES	35,478.00	35,478.00	34,979.88	6,042.96	16,601.35	-16,103.23	145.4
90002 OPERATING TRANSFER-OUT	8,471.00	8,471.00	4,941.58	705.94	0.00	3,529.42	58.3

Dept: 00

	168,627.00	168,365.00	87,459.76	12,736.25	24,257.16	56,648.08	66.4
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Expenditures

	168,627.00	168,365.00	87,459.76	12,736.25	24,257.16	56,648.08	66.4
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Net Effect for SOLID WASTE FUND

-28,950.00

-28,688.00

-11,882.47

-2,353.86

24,257.16

7,451.63

126.0

Change in Fund Balance:

-11,882.47

47300 LEGISLATIVE APPROPRIATIONS  $\phi$  210,000 Revenue

58080 VEHICLES  $\phi$  247,060 Expense

90001 OPERATING TRANSFER IN  $\phi$  20,000 Revenue



Department of Finance and Administration  
Local Government Division  
Financial Management Bureau  
SCHEDULE OF BUDGET ADJUSTMENTS

REVISED 12/08/06

ENTITY NAME: Village of Magdalena  
FISCAL YEAR: FY2019-2020  
DFA Resolution Number:

Page 1 of 2 Pages

For Local Government Division use only:

(A) ENTITY RESOLUTION NUMBER	(B) LPS ACCOUNT	(B) DFA ACCOUNT	(C) REVENUE EXPENDITURE TRANSFER (TO or FROM)	(D) APPROVED BUDGET	(E) ADJUSTMENT	(F) ADJUSTED BUDGET	(G) PURPOSE
2020-07	101-00-44000	11000-0001-47140	Small Cities Assistance	\$150,000	\$70,000	\$220,000	Increase Budget for Additional Funds Received
	101-15-90002	11000-0001-61200	GF-Transfers Out	\$20,000	\$21,101	\$41,101	Supplemental Funds Needed for New Trash Truck
	502-00-90001	50200-0001-61100	SW-Transfers In	\$15,500	\$21,101	\$36,601	Supplemental Funds Needed for New Trash Truck
	101-15-90002	11000-0001-61200	GF-Transfers Out	\$41,101	\$44,000	\$85,101	Excess Small Cities Assistance to Reduce Past Due Landfill Invoices
	502-00-90001	50200-0001-61100	SW-Transfers In	\$36,601	\$44,000	\$80,601	Excess Small Cities Assistance to Reduce Past Due Landfill Invoices
	500-00-52060	50500-9002-57050	Employee Training	\$0	\$9,200	\$9,200	Create Budget for EMS Training Program
	500-00-55050	50500-9002-54040	Repair & Maint-Vehicle	\$103	\$1,603	\$1,603	Create Budget for Ambulance Professional Services
	500-00-56200	50500-9002-55030	Other Professional Svcs	\$0	\$4,300	\$4,300	Create Budget for Ambulance Professional Services
	403-20-48000	40400-0001-46030	Interest Income	\$0	\$171	\$171	Split NMFA Loan Budgets Between Funds 403 and 404-Police Vehicles
	403-20-80001	40400-2002-59010	Debt Service-Principal	\$0	\$13,074	\$13,074	Split NMFA Loan Budgets Between Funds 403 and 404-Police Vehicles
	403-20-80003	40400-2002-59020	Debt Service-Admin Fee	\$0	\$27	\$27	Split NMFA Loan Budgets Between Funds 403 and 404-Police Vehicles
	403-20-80001	40400-0001-61100	Operating Transfer-In	\$0	\$12,930	\$12,930	Split NMFA Loan Budgets Between Funds 403 and 404-Police Vehicles
	403-24-48000	40400-0001-46030	Interest Income	\$0	\$258	\$258	Split NMFA Loan Budgets Between Funds 403 and 404-Fire Truck
	403-24-80001	40400-2002-59010	Debt Service-Principal	\$0	\$17,118	\$17,118	Split NMFA Loan Budgets Between Funds 403 and 404-Fire Truck
	403-24-80002	40400-2002-59020	Debt Service-Interest	\$0	\$51	\$51	Split NMFA Loan Budgets Between Funds 403 and 404-Fire Truck
	403-24-80003	40400-2002-59050	Debt Service-Admin Fee	\$0	\$156	\$156	Split NMFA Loan Budgets Between Funds 403 and 404-Fire Truck
	403-24-90001	40400-0001-61100	Operating Transfer-In	\$0	\$17,067	\$17,067	Split NMFA Loan Budgets Between Funds 403 and 404-Fire Truck
					\$0	\$0	
					\$0	\$0	
					\$0	\$0	
					\$0	\$0	
					\$0	\$0	
					\$0	\$0	

ATTEST:

Municipal Clerk

(Date)

Mayor

(Date)



Prepared by:  
 Pat Torres  
**LONESTAR FREIGHTLINER**  
 GROUP, LLC  
 12901 US HIGHWAY 66 WEST  
 FRONTAGE ROAD  
 ALBUQUERQUE, NM 87121  
 Phone: 505-833-1000

## Q U O T A T I O N

### M2 106 CONVENTIONAL CHASSIS

SET BACK AXLE - TRUCK  
 DD8 7.7L 6 CYL DUAL STAGE 330 HP @ 2200 RPM, 2600  
 GOV RPM, 1000 LB/FT @ 1200 RPM  
 ALLISON 3000 RDS AUTOMATIC TRANSMISSION WITH  
 PTO PROVISION  
 RS-21-160 21,000# R-SERIES SINGLE REAR AXLE  
 21,000# 52 INCH VARIABLE RATE MULTI-LEAF SPRING  
 REAR SUSPENSION WITH LEAF SPRING  
 HELPER

DETROIT DA-F-14.7-3 14,700# FF1 71.5 KPI/3.74 DROP  
 SINGLE FRONT AXLE  
 14,600# TAPERLEAF FRONT SUSPENSION  
 106 INCH BBC FLAT ROOF ALUMINUM CONVENTIONAL  
 CAB  
 5750MM (226 INCH) WHEELBASE  
 11/32X3-1/2X10-15/16 INCH STEEL FRAME  
 (8.73MMX277.8MM/0.344X10.94 INCH) 120KSI  
 1600MM (63 INCH) REAR FRAME OVERHANG

		PER UNIT	TOTAL
VEHICLE PRICE	TOTAL # OF UNITS (1)	\$ 84,955	\$ 84,955
EXTENDED WARRANTY		\$ 4,646	\$ 4,646
DEALER INSTALLED OPTIONS		\$ 0	\$ 0
<b>CUSTOMER PRICE BEFORE TAX</b>		<b>\$ 89,601</b>	<b>\$ 89,601</b>
<b>TAXES AND FEES</b>			
TAXES AND FEES		\$ 0	\$ 0
OTHER CHARGES		\$ 141,500	\$ 141,500
<b>TRADE-IN</b>			
TRADE-IN ALLOWANCE		\$ (0)	\$ (0)
<b>BALANCE DUE</b>	<b>(LOCAL CURRENCY)</b>	<b>\$ 231,101</b>	<b>\$ 231,101</b>

### COMMENTS:

Projected delivery on \_\_\_/\_\_\_/\_\_\_

### APPROVAL:

Please indicate your acceptance

Customer: X \_\_\_\_\_

*Handwritten:* \$ 231,101  
 - 21000  
 21101 Bal

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

**Aviation Grant Agreement Form**



Date

Jan 22, 2021

Project Location

N29 - MAGDALENA AIRPORT

Sponsor

MAGDALENA, VILLAGE OF

Address

PO BOX 145

City

MAGDALENA

NM

Zip Code

87825

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

**NMDOT - AVIATION DIVISION  
3501 ACCESS RD. C  
ALBUQUERQUE, NM 87106**

Participation

STATE ONLY

Funding Breakdown

100

Contract No. \_\_\_\_\_

Project No.

N29-21-02

Vendor No.

0000054348

Expiration Date \_\_\_\_\_

Purchase Order No: \_\_\_\_\_

## AVIATION GRANT AGREEMENT

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

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

### 1. Purpose.

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

#### a. Project Description:

EQUIPMENT BUILDING

b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.

c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
\$ 29,000	\$ 0	\$ 0	\$ 29,000

### 2. The Sponsor Shall:

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

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

### **3. The Department Shall:**

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

### **4. Both Parties Agree:**

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

### **5. Method of Payment - Reimbursement.**

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

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

### **6. Accountability of Receipts and Disbursements.**

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

## **7. Term.**

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

## **8. Termination for Cause.**

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

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

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

## **9. Disposition of Property.**

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

## **10. Representations and Certification.**

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

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

## **11. Assurances.**

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

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

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

#### **12. Third Party Beneficiaries.**

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

#### **13. New Mexico Tort Claims Act.**

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

#### **14. Scope of Agreement.**

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

#### **15. Terms of this Agreement.**

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

#### **16. Equal Opportunity Compliance.**

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

**17. Appropriations and Authorizations of State and Federal Funds.**

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

**18. Severability.**

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

**19. Applicable Law.**

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

**20. Principal Contacts and Notices.**

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

Name: Daniel R. Moran  
Title: Finance & Administrative Manager  
  
Address: New Mexico Department of Transportation - Aviation Division  
3501 Access Rd C.  
Albuquerque, NM 87106  
Office: (505) 244-1788 ext. 9112  
Fax: (505) 244-1790  
E-mail: dan.moran@state.nm.us

Name	RICHARD RUMPF		
Title	MAYOR		
Sponsor	MAGDALENA, VILLAGE OF		
Address	PO BOX 145		
City	MAGDALENA	NM	Zip Code 87825
Office Phone	+1 (575) 541-2473	Fax	
E-Mail	mayor@villageofmagdalena.com		

**21. Amendment.**

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

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

Recommended by:

By: \_\_\_\_\_  
Aviation Division Director  
or Designee

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

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

By: \_\_\_\_\_  
Assistant General Counsel

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

**SPONSOR**

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

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

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

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



**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

Aviation Grant Agreement Form



Date

Jan 22, 2021

Project Location

N29 - MAGDALENA AIRPORT

Sponsor

MAGDALENA, VILLAGE OF

Address

PO BOX 145

City

MAGDALENA

NM

Zip Code

87825

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

**NMDOT - AVIATION DIVISION  
3501 ACCESS RD. C  
ALBUQUERQUE, NM 87106**

Participation

STATE ONLY

Funding Breakdown

100

Contract No. \_\_\_\_\_

Project No. N29-21-03

Vendor No.

0000054348

Expiration Date \_\_\_\_\_

Purchase Order No: \_\_\_\_\_

## AVIATION GRANT AGREEMENT

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

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

### 1. Purpose.

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

#### a. Project Description:

TRACTOR AND ATTACHMENTS

b. Site of Development. The site of development is identified on the property map, attached as Exhibit A.

c. Funding. Below is the funding for the Project. The State's contribution is the maximum amount that the Department will contribute. Attached as Exhibit B is the engineer's cost estimate.

State	Sponsor	Other	Total
\$ 80,250	\$ 0	\$ 0	\$ 80,250

### 2. The Sponsor Shall:

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

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

### **3. The Department Shall:**

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

### **4. Both Parties Agree:**

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

### **5. Method of Payment - Reimbursement.**

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

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

### **6. Accountability of Receipts and Disbursements.**

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

## **7. Term.**

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

## **8. Termination for Cause.**

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

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

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

## **9. Disposition of Property.**

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

## **10. Representations and Certification.**

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

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

## **11. Assurances.**

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

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

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

#### **12. Third Party Beneficiaries.**

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

#### **13. New Mexico Tort Claims Act.**

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

#### **14. Scope of Agreement.**

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

#### **15. Terms of this Agreement.**

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

#### **16. Equal Opportunity Compliance.**

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

**17. Appropriations and Authorizations of State and Federal Funds.**

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

**18. Severability.**

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

**19. Applicable Law.**

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

**20. Principal Contacts and Notices.**

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

Name: Daniel R. Moran  
Title: Finance & Administrative Manager  
  
Address: New Mexico Department of Transportation - Aviation Division  
3501 Access Rd C.  
Albuquerque, NM 87106  
Office: (505) 244-1788 ext. 9112  
Fax: (505) 244-1790  
E-mail: dan.moran@state.nm.us

Name	RICHARD RUMPF		
Title	MAYOR		
Sponsor	MAGDALENA, VILLAGE OF		
Address	PO BOX 145		
City	MAGDALENA	NM	Zip Code 87825
Office Phone	+1 (575) 541-2473	Fax	
E-Mail	mayor@villageofmagdalena.com		

**21. Amendment.**

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

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

Recommended by:

By: \_\_\_\_\_  
Aviation Division Director  
or Designee

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

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

By: \_\_\_\_\_  
Assistant General Counsel

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

**SPONSOR**

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

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

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

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