



**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, SEPTEMBER 27, 2021**  
**VILLAGE HALL 108 N. MAIN STREET 5:00 PM**

**PURSUANT TO PUBLIC HEALTH ORDER DATED AUGUST 17, 2021 ALL INDIVIDUALS ARE REQUIRED TO WEAR MASKS AND CONTINUED SOCIAL DISTANCING IS ENCOURAGED.**

**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- SEPTEMBER 13, 2021
6. APPROVAL OF CASH BALANCE REPORT
7. APPROVAL OF BILLS
8. MAYOR'S REPORT
9. CLERK'S REPORT
  
10. DISCUSSION & POSSIBLE DECISION TO DIRECT PUBLICATION OF ORDINANCE NO. 2021-02, AN ORDINANCE ESTABLISHING A CONDITIONAL STIPEND FOR THE MAYOR OF THE VILLAGE OF MAGDALENA
  
11. DISCUSSION & POSSIBLE DECISION TO DIRECT PUBLICATION OF ORDINANCE NO. 2021-03, AN ORDINANCE PROVIDING FOR REGULATION OF LOCATION AND CONSUMPTION OF RECREATIONAL AND MEDICAL CANNABIS; PROVIDING A PENALTY; ESTABLISHING SEVERABILITY AND AN EFFECTIVE DATE
  
12. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF PRICE INCREASE IN SURVEYING SERVICES FOR BENJAMIN WELLSITE USING AMERICAN RESCUE FUNDS
  
13. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION 2021-13, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BETWEEN THE VILLAGE OF MAGDALENA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF \$66,416, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING A NEW POLICE VEHICLE AND RELATED EQUIPMENT FOR THE GOVERNMENTAL UNIT; PROVIDING FOR THE PLEDGE AND PAYMENT OF PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM STATE LAW ENFORCEMENT PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 29-13-6, NMSA 1978; PROVIDING FOR THE DISTRIBUTION OF STATE LAW ENFORCEMENT

PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; SETTING THE MAXIMUM INTEREST RATE OF THE LOAN; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT

14. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION 2021-14, A REVISION OF RESOLUTION 2020-08, PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

15. 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, SEPTEMBER 27, 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.

16. 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.*

**VILLAGE OF MAGDALENA  
COUNTY OF SOCORRO  
STATE OF NEW MEXICO**

**NOTICE OF PUBLICATION OF PROPOSED ORDINANCE ADOPTION  
ORDINANCE NO. 2021-02**

**THE VILLAGE OF MAGDALENA TO ALL INTERESTED PERSONS,**

**GREETINGS:**

**NOTICE IS HEREBY GIVEN** that an ordinance proposed for adoption by the Governing Body of the Village of Magdalena is now pending before said Governing Body.

The title of said Ordinance is: "ESTABLISHING A CONDITIONAL STIPEND FOR THE MAYOR OF THE VILLAGE OF MAGDALENA".

The purpose of the ordinance is stated in the title of the ordinance. Said ordinance will come for public hearing and final consideration by the Governing Body of the Village of Magdalena at its regular meeting held on October 11, 2021

Any interested person upon request and payment of \$2.00 may obtain copies of the proposed ordinance from the Village Clerk during regular business hours.

Francesca Smith  
Clerk/ Treasurer  
Village of Magdalena  
PO Box 145  
108 N. Main Street  
Magdalena, NM 87825  
Ph (575) 854-2261  
Fax (575) 854-2273



**VILLAGE OF MAGDALENA  
ORDINANCE 2021-02**

**ESTABLISHING A CONDITIONAL STIPEND FOR THE MAYOR OF THE  
VILLAGE OF MAGDALENA**

**WHEREAS**, the Village of Magdalena Board of Trustees met upon notice of meeting duly published at Village Hall, 108 N. Main St., Magdalena, NM 87801 on , 2021 at 5:00 p.m. as required by law; and,

**WHEREAS**, NMSA 1978, Section 3-10-3 provides that municipalities may establish by Ordinance compensation for the Mayor; and,

**WHEREAS**, NMSA 1978, Section 3-11-4(C) establishes that the Mayor is the chief executive officer of the municipality and may perform other duties, compatible with his office, that the governing body may require; and,

**WHEREAS**, NMSA 1978, Section 3-12-3(A)(9) provides that the governing body may impose additional powers and duties upon those officers whose powers and duties are provided for by law; and,

**WHEREAS**, the Board of Trustees for the Village of Magdalena finds that consistent Mayoral presence and accessibility are conducive to the efficient administration of the Village, and believes that establishing a stipend for a Mayor who meets minimum requirements would be in the best interest of the Village; and,

**WHEREAS**, Article IV, Section 27 of the New Mexico Constitution provides that “[n]o law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution.

**NOW THEREFORE, BE IT ORDAINED** that the Board of Trustees of the Village of Magdalena adopts this Ordinance establishing a conditional stipend for Village Mayors taking office beginning with the next term of office December 1, 2022 and for ensuing terms unless and until this Ordinance is amended or repealed.

**NOW, THEREFORE, BE IT FURTHER ORDAINED** that a Mayor who logs at least twenty-five (25) work hours per month, whether they be performed in the Village offices, in the community, or elsewhere, on a form approved by the Village, shall receive a monthly stipend in the amount of : \_\_\_\_\_ Minimal hours must be served each month and may not be carried over from month-to-month. The stipend may not be prorated, but must be earned in its entirety, or not at all, for that month.

**Passed, Approved, and Adopted** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Approved:

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

\_\_\_\_\_  
Katherine Stout, General Counsel as to  
legal sufficiency

Attested:

\_\_\_\_\_  
Francesca Smith  
Village Clerk/Treasurer



# **VILLAGE OF MAGDALENA RECREATIONAL AND MEDICAL CANNABIS REGULATIONS**

**PASSED: \_\_\_\_\_, 2021**

**EFFECTIVE: \_\_\_\_\_, 2021**

**ORDINANCE # 2021-03**

**AN ORDINANCE PROVIDING FOR REGULATION OF LOCATION AND CONSUMPTION OF RECREATIONAL AND MEDICAL CANNABIS; PROVIDING A PENALTY; ESTABLISHING SEVERABILITY AND AN EFFECTIVE DATE**

**WHEREAS**, NMSA 1978, Section 3-18-1 (1972) provides that municipalities have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

**WHEREAS**, Section 3-17-1 et seq. NMSA 1978 provides that municipalities may adopt ordinances to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of its inhabitants; and,

**WHEREAS**, NMSA 1978, Section 26-2C-12 (2021), and NMSA 1978, Sections 24-16-2 (1985) and – 20 (2007) vests the Village with the authority to adopt time, place and manner rules that do not conflict with the Cannabis Regulation Act or the Dee Johnson Clean Indoor Air Act, including rules that reasonably limit density of licenses and operating times consistent with neighborhood uses; and,

**WHEREAS**, the Cannabis Regulation Act, NMSA 1978, Section 26-2C-1 *et seq.*, has authorized a variety of uses related to the legalization of commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market; and,

**WHEREAS**, Cannabis cultivation, production, and manufacturing creates strong odors, can involve the use of significant amounts of energy and water, and requires security and other measures to reduce the risk of theft or other diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and,

**WHEREAS**, Cannabis is an intoxicating drug, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which cannabis products may be consumed; and,

**WHEREAS**, the smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates; and,

**WHEREAS**, density limits are necessary to ensure that cannabis retailers and consumption areas are not unduly concentrated and do not crowd out other non-residential uses.

**WHEREAS**, the Village of Magdalena Board of Trustees finds it necessary to adopt this Ordinance to restrict the time, place, and manner of the sale and consumption of cannabis to protect residents from annoyance and injury resulting from such operations, and to prescribe penalties for violations of this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Village of Magdalena Board of Trustees as follows:

**SECTION I  
SHORT TITLE**

1.1 This Ordinance shall be known as the “VILLAGE OF MAGDALENA RECREATIONAL AND MEDICAL CANNABIS REGULATIONS”, and shall be referred to herein as “this Ordinance”.

**SECTION II  
AUTHORITY**

2.1 This Ordinance is enacted pursuant to the authority granted to municipalities to provide for the safety and to preserve the health of the residents of the municipality as set forth in NMSA 1978 3-17-1 and pursuant NMSA 1978, Section 26-2C-12 (2021) and NMSA 1978, Sections 24-16-2 (1985) and 24-16-20 (2007).

**SECTION III  
DEFINITIONS**

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

Cannabis: (1) all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and

(2) does not include:

- (a) the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or
- (b) the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink or another product.



**Cannabis Consumption Area:** an area where cannabis products may be served and consumed.

**Cannabis Courier:** a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

**Cannabis Establishment:** (1) a cannabis testing laboratory; (2) a cannabis manufacturer; (3) a cannabis producer; (4) a cannabis retailer; (5) a cannabis research laboratory; (6) a vertically integrated cannabis establishment; (7) a cannabis producer microbusiness; or (8) an integrated cannabis microbusiness.

**Cannabis Extract:** (1) means a product obtained by separating resins, tetrahydrocannabinols or other substances from cannabis by extraction methods approved by the division; and (2) does not include the weight of any other ingredient combined with cannabis extract to prepare topical or oral administrations, food, drink or another product.

**Cannabis Flowers:** only the flowers of a cannabis plant.

**Cannabis Manufacturer:** a person that: (1) manufactures cannabis products; (2) packages cannabis products; (3) has cannabis products tested by a cannabis testing laboratory; or (4) purchases, acquires, sells or transports wholesale cannabis products to other cannabis establishments.

**Cannabis Producer:** a person that: (1) cultivates cannabis plants; (2) has unprocessed cannabis products tested by a cannabis testing laboratory; (3) transports unprocessed cannabis products only to other cannabis establishments; or (4) sells cannabis products wholesale.

**Cannabis Producer Microbusiness:** a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.

**Cannabis Product:** a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.

**Cannabis Research Laboratory:** a facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.

**Cannabis Retailer:** a person that sells cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

**Cannabis Testing Laboratory:** a person that samples, collects and tests cannabis products and transports cannabis products for the purpose of testing.

**Commercial Cannabis Activity:** (1) the cultivation, production, possession, manufacture, storage, testing, researching, labeling, transportation, couriering, purchase for resale, sale

or consignment of cannabis products; and (2) does not include activities related only to the medical cannabis program, to cannabis training and education programs or to the personal cultivation or use of cannabis.

**Consumer:** a person twenty-one years of age or older who purchases, acquires, owns, possesses or uses a cannabis product for a purpose other than resale.

**Cultivation:** any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis.

**Dry Weight Basis:** when used in the context of regulation of commercial cannabis activity, means a process by which delta-9-tetrahydrocannabinol concentration is measured relative to the aggregate weight of all parts of the plant genus Cannabis, whether growing or not, including the leaves of the plant, the flowers and buds of the plant, the seeds of the plant, the resin of the plant and the stalks of the plant at the point of harvest by a licensee and with no moisture added to the harvested plant.

**E-cigarette:** a product containing or delivering nicotine or another substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product, including a device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape pen or under another product name or descriptor.

**Facility:** a building, space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts or cannabis products.

**Integrated Cannabis Microbusiness:** a person that is authorized to conduct one or more of the following: (1) production of cannabis at a single licensed premises; provided that the person shall not possess more than two hundred total mature cannabis plants at any one time; (2) manufacture of cannabis products at a single licensed premises; (3) sales and transportation of only cannabis products produced or manufactured by that person; (4) operation of only one retail establishment; and (5) couriership of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

**Licensed Premises:** a location that includes: (1) all enclosed public and private areas at the location that are used in the business and includes offices, kitchens, restrooms and storerooms; (2) all areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale or retail sale of cannabis products; and (3) with respect to a location that is specifically licensed for the production of cannabis outside of a building, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases or has a right to occupy.

**Manufacture:** to compound, blend, extract, infuse, package or otherwise prepare a cannabis product. **Medical Cannabis:** cannabis products used by a qualified patient or reciprocal participant in accordance with the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B.

**Medical Cannabis Program:** the program created pursuant to the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B.

**Public Place:** a place to which the public has access and includes hallways, lobbies, and other parts of apartment houses and hotels that do not constitute rooms or apartments designed for actual residence; highways; streets; schools; places of amusement; parks; playgrounds; and places used in connection with public passenger transportation.

**Public Property:** any property owned or occupied by the Village of Magdalena.

**Qualified Patient:** a resident of New Mexico who holds a registry identification card pursuant to the Lynn and Erin Compassionate Use Act, NMSA 1978, Chapter 26, Article 2B.

**Reciprocal Participant:** a person who is not a resident of New Mexico and who holds proof of enrollment by a governmental regulatory authority to participate in the medical cannabis program of another state of the United States, the District of Columbia or a territory or commonwealth of the United States in which the person resides or a person who holds proof of enrollment by a governmental regulatory authority of a New Mexico Indian nation, tribe or pueblo to participate in its medical cannabis program.

**Retail Establishment:** a location at which cannabis products are sold to qualified patients, primary caregivers and reciprocal participants and directly to consumers.

**Smoking:** (1) inhaling from, exhaling from, burning, carrying or holding: (a) a lighted or heated cigar, cigarette, hookah or pipe; or (b) any other lighted or heated tobacco or plant product intended for inhalation, including cannabis, whether natural or synthetic; or (2) any use of an e-cigarette that creates an aerosol or vapor.

**Standalone Building:** a building whose heating, air conditioning and ventilation system services only that building.

**Unprocessed:** unaltered from an original, raw or natural state.

**Vertically Integrated Cannabis Establishment:** a person that is authorized to act as any of the following: (1) a cannabis courier; (2) a cannabis manufacturer; (3) a cannabis producer; and (4) a cannabis retailer.

## **SECTION IV LOCATION**

**4.1** No cannabis establishment, cannabis consumption area, or cannabis courier may be located within 300 feet of a school or daycare center, residence, church or religious assembly, library, rodeo or fairgrounds, cultural center, or other cannabis establishment, cannabis consumption area, or cannabis courier, in existence at the time a license was

sought for the cannabis establishment, cannabis consumption area, or cannabis courier. For purpose of this section, all measurements for the purpose of determining the location of a cannabis establishment, cannabis consumption area, or cannabis courier in relation to such locations shall be the shortest direct line measurement between the main entrance of the school, daycare center, residence, church or religious assembly, library, rodeo, fairgrounds, cultural center, or other cannabis establishment, cannabis consumption area, or cannabis courier, in existence at the time a license was sought, and the main entrance of the proposed cannabis establishment, cannabis consumption area, or cannabis courier. **THE FOOTAGE, MEASUREMENTS, FACILITIES, ETC. CAN BE LESS**

4.2 Cannabis retailers and cannabis consumption areas may only operate during the following hours: Cannabis products may only be served and consumed in cannabis consumption areas between the hours of 7:00 a.m. and 2:00 a.m. Monday through Saturday and noon to midnight on Sundays. Cannabis retailers may only sell cannabis products for off-site consumption between the hours of 7:00 a.m. and midnight Monday through Saturday and noon to midnight on Sundays.

4.3 Cannabis producers that cultivate cannabis plants indoors and cannabis manufacturers must use industry standard techniques to minimize odorous matter, toxic or noxious matter, such as activated carbon filtration and regular maintenance of HVAC systems.

## **SECTION V CONSUMPTION**

5.1 Cannabis consumption areas are subject to the following:

- a. A cannabis consumption area in which consumption is limited to consumption by qualified patients or reciprocal participants may be located inside any cannabis retailer; provided, however, that smoking of cannabis products in such consumption areas is only allowed if the cannabis consumption area occupies a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16.
- b. Cannabis consumption areas that are open to consumers are also subject to the following:
  - i. the smoking of cannabis products is not allowed outdoors;
  - ii. the smoking of cannabis products is only allowed within a licensed cannabis consumption area that occupies a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited

pursuant to the Dee Johnson Clean Indoor Air Act, NMSA 1978, Chapter 24, Article 16; and

- iii. access to cannabis consumption areas open to consumers is restricted to persons twenty-one years of age and older.
- c. No person shall consume cannabis in a public place or on public property or consume cannabis products in any place where the smoke is detectable from a public place or from public property.

## **SECTION VI APPLICABILITY OF OTHER LAWS**

6.1 Any person engaged in commercial cannabis activities and activities under the medical cannabis program other than personal production and use must obtain a Village business license, and comply with all applicable State and local laws.

## **SECTION VII ENFORCEMENT**

7.1 The Magdalena Marshal is responsible for the enforcement of this chapter. All citations must be honored in a court of law subject to penalties as stated herein.

## **SECTION VIII PENALTIES**

8.1 Any person who violates any of the provisions of the Recreational and Medical Cannabis Regulations shall be deemed guilty of a misdemeanor.

8.2 Each violation of this chapter shall be punishable by a fine of no more than \$300, and/or imprisonment for no more than 90 days, or both.

## **SECTION IX SEVERABILITY**

9.1 If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Ordinance is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the Village of Magdalena Board of Trustees to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.

## **SECTION X EFFECTIVE DATE**

10.1 This Ordinance shall be recorded, authenticated and published by the Village Clerk/Treasurer following adoption by this Board. This Ordinance shall take effect five (5) days after publication.

**APPROVED, ADOPTED, AND ORDAINED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Approved:

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

\_\_\_\_\_  
Katherine Stout, General Counsel as to  
legal sufficiency

Attested:

\_\_\_\_\_  
Francesca Smith  
Village Clerk/Treasurer

September 13, 2021

voice: 505.823.1000  
facsimile: 505.798.7988  
toll free: 800.877.5332

Mayor Richard Rumpf  
Village of Magdalena  
108 N. Main St.  
Magdalena, NM 87825

Re: Proposal for Surveying Services – Benjamin Wellsite

Dear Mr. Rumpf:

Thank you for the opportunity to offer you a proposal for surveying services related to the survey of the Benjamin Wellsite. The project is located west of Magdalena, NM within Section 28, Township 2 South, Range 4 West. Based on the information provided by Nathan Roberts, the following scope and fee is proposed:

## **SCOPE OF SERVICES**

### **Control Survey**

Three control points will be established in the immediate area of the wellsite. A control report will be provided which describes monuments set, field methodology, coordinate system parameters, and datums used.

### **Boundary/Easement Determination**

The Benjamin Wellsite and Ingress/Egress Easement as described and recorded in Book 454, Pages 784-790, Socorro County Records on July 8, 1997, will be retraced on the ground. A BHI survey technician will search for and tie any found boundary monuments at the record boundary corner locations. A New Mexico licensed surveyor will then analyze the collected field evidence and use this, along with the recorded legal description of the easements, to determine the location of the easements on the ground. Once this determination has been made, the technician will return to the site to mark the corners of the easement and adjoining tract boundary lines with lath and flagging tape. Boundary lines of the subject property and the adjoining properties will be retraced on an as-needed basis. This level of effort will be limited to collecting enough evidence to accurately determine the location of the existing wellsite and access easement. This is not to be considered a complete boundary survey of the subject tract. Development of a boundary survey plat and/or monumentation of tract corners is excluded from this scope of work. A CAD file showing the determined easement/boundary lines will be provided.

### **NM811 Coordination**

A survey technician will “white-mark” the limits of the wellsite easement with a combination of white spray paint, pin flags or lath with flagging tape. A Design Locate Request will then

Engineering ▲

Spatial Data ▲

Advanced Technologies ▲

be submitted to NM811 to facilitate the marking of all underground utilities by utility owners within the perimeter of the marked area.

**Topographic Survey**

A topographic survey will be conducted on a separate mobilization following the boundary/easement retracement, once the design team, client, and owner review the bounds of the existing wellsite easement. The limits of the topographic survey is shown on Attachment A, which includes the existing wellsite easement, the area south of the wellsite easement extending to the property line to the south, the area extending 100' north of the wellsite easement, and the entire access easement extending north to NM-169. All planimetric and topographic features within the existing wellsite easement will be mapped during the survey, including but not limited to: grade breaks, drainage structures, fences, curb/gutter, edge of pavement/concrete, visible utility features and paint marks left by utility owners which designate underground facilities. Manhole invert depths and pipe sizes will be recorded for any sanitary or storm drain manhole within the survey limits if the survey crew is able to open the manhole cover safely. No manholes will be opened within roadways which require traffic control to open. Topographic data will be provided in Civil 3D 2021 files, including 2D/3D planimetrics and a surface file. The development of a certified topographic map is excluded from this task.

**Survey Deliverables**

Deliverable items will include:

- Control Report certified by a New Mexico licensed surveyor describing the survey control set onsite, including field methodology, coordinate system parameters and datums used.
- Civil 3D 2021 files including 2D and 3D planimetric files and a surface file using BH NCS Standards.

**Fees**

Control Survey:	\$1,062.75
Boundary/Easement Determination:	\$7,766.50
NM811 Coordination:	\$ 980.75
Topographic Survey:	\$9,697.50

**TOTAL LUMP SUM FEE: \$19,507.50 + New Mexico Gross Receipts Tax**



**GENERAL NOTES / ASSUMPTIONS:**

1. This proposal has been prepared assuming services would be provided as described in the paragraphs above. Specific items of service not in this proposal include, but are not limited to, the following: construction staking, platting, right-of-way mapping or preparation of legal descriptions for new easements.
2. Data will be delivered in modified (scaled to ground) New Mexico State Plane Coordinates derived from NAD83 horizontal datum. Elevations will be based on NAVD88 vertical datum.
3. Any additional work requested by the client in addition to those tasks identified above will be invoiced on a time & materials basis.
4. Underground utilities within the survey area are to be marked by the facility owners, initiated by BHI's Design Locate Request with NM811. BHI will not be responsible for any deficiencies or lack of responses from the facility owners.
5. It is assumed that by acceptance of this proposal, BHI is granted access to the project site. The client shall notify the owner of the subject property (and adjoining properties) prior to the scheduled survey to allow the BHI survey technician free access to conduct field work.
6. Delivery shall be made within 20 business days of receiving a notice to proceed or executed purchase order.
7. In the event that BHI encounters a major unforeseen boundary issue or conflict, BHI will stop work and reserves the right to renegotiate the fee for this project based on the new circumstances.

This letter and the enclosures listed below constitute the contract:

- Standard Form of Agreement
- Fee Schedule
- Attachment A

If this proposal is acceptable, please sign in the space provided below and in the Standard Form Agreement and return to the BHI project manager at your earliest convenience. The signed letter will be considered our notice to proceed.

Dean Christmas will be the professional surveyor and survey project manager with project oversight. Any scheduling issues or company contact can be made through Dean at 505-798-7834 or [dchristmas@bhinc.com](mailto:dchristmas@bhinc.com). We look forward to working on this project with you

Mayor Richard Rumpf  
Village of Magdalena  
September 13, 2021  
Page 4

and ask that if you have any questions on scope, level of effort, or schedule, to please call me to discuss. We want to ensure that your survey requirements are met in the most efficient and effective way possible.

Sincerely,



Alan R. Benham, PE, PLS, CFedS  
Senior Vice President  
Spatial Data & Survey Technologies

ARB/DC/rss  
Attachments

ACCEPTED BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**BOHANNAN HUSTON, INC.  
STANDARD FORM OF AGREEMENT  
FOR  
PROFESSIONAL SERVICES OTHER THAN DESIGN AND CONSTRUCTION**

**CONTRACT NAME:** Proposal for Surveying Services – Benjamin Wellsite

**DATE:** September 13, 2021

**ARTICLE 1. DEFINITIONS**

Bohannan Huston, Inc. (BHI), whose address and telephone is 7500 Jefferson St NE, Albuquerque, NM, 87109, 505-823-1000 shall also be referred to as BHI for its subsidiaries. The Client, Village of Magdalena, whose address is 108 N. Main Street, Magdalena, NM 87825, shall be referred to as Client and shall refer to the party, partnership, corporation, or entity signing this contract.

**ARTICLE 2. INVOICES AND PAYMENT PROVISIONS**

The Client will be invoiced each month for work, which has been accomplished to the date shown on the invoice. Invoices are due and payable upon receipt. Questionable charges or errors on an invoice shall be brought to the attention of BHI within fourteen (14) days of the invoice date, or it is agreed that the charges are correct as invoiced. Disputed charges will be reconciled in a timely fashion and a revised invoice will be issued, if necessary. The revised invoice will be due and payable upon receipt. Invoices or portions of invoices unpaid more than thirty (30) days from the invoice date shall accrue interest at a rate of 1% per month until paid in full. The Client hereby agrees to pay all costs and expenses incurred by BHI including but not limited to reasonable attorney fees in pursuing collection of any sums not paid to BHI pursuant to the terms of this contract. BHI may terminate this contract if payment on any invoice not in dispute is not paid in full within forty-five (45) days from the date of the invoice. Fees invoiced are due whether or not the project is constructed. Portions of the fee that may be billed on a time and materials basis will be billed in accordance with the Fee Schedule in effect at the time the services are invoiced. Applicable Gross Receipts Tax will be added to all charges. Applicable fees for processing, permits, or review shall be paid by the Client. Additional provisions are as follows:

- A. Oral or Implied Acceptance of Contract:** This Contract has been forwarded to the Client prior to execution by both parties, and the Client understands that BHI may proceed prior to receipt of executed copy of professional services contract. Client's oral acceptance or authorization to initiate services shall be considered by both parties to constitute acceptance of all terms and conditions of this contract prior to formal execution.
- B. Project Mobilization Fee/Retainer:** BHI may require a mobilization fee or retainer prior to the commencement of work. The mobilization fee or retainer will be applied to project charges as they are incurred and invoiced.
- C. Right to Renegotiate:** BHI reserves the right to renegotiate this contract should project be halted for 30 days or more.

**ARTICLE 3. CONTRACT RENEGOTIATION**

BHI reserves the right to renegotiate fee schedule rates annually for open-end hourly rate and time and materials contracts.

**ARTICLE 4. CLAIMS**

The Client acknowledges that BHI is a corporation and agrees that any claim made by the Client arising out of any act or omission of any director, officer, or employee of BHI in the execution or performance of this contract shall be made against BHI and not against such director, officer, or employee individually.

- A. Professional surveying services:** Pursuant to Section 61-23-27.9(D) NMSA 1978, BHI carries professional liability insurance coverage for surveying services in the amount of \$2 million dollars per occurrence and \$4 million dollars in aggregate.

**ARTICLE 5. INFORMATION SUPPLIED BY CLIENT**

Client certifies that any Client furnished information supplied to BHI is correct and BHI can rely on this information as being correct as a basis for BHI's work product. Furthermore, BHI will not assume any responsibility or liability for errors or omissions in Client furnished information.

**ARTICLE 6. PROPRIETARY INFORMATION**

The use of any plans or specifications prepared by BHI shall be restricted to the original site for which they were prepared. Reproduction, reuse, or alteration by any method, in whole or in part, is prohibited unless authorized in writing by BHI. Any unauthorized reproduction, reuse or alteration of documents relieves BHI of any responsibilities or liabilities whatsoever. BHI has the right to photograph any phase of this project, under the terms

of this contract, and to use the photos in the promotion of the professional practice through advertising, public relations, brochures, or other marketing materials.

Drawings and specifications as instruments of service are and shall remain the property of BHI whether the project for which they are made is constructed or not. These drawings are not to be used by the Client on other projects, or extensions to this project, except by contract in writing and with appropriate compensation to BHI.

#### **ARTICLE 7. FORCE MAJEURE**

Should the services provided as a result of this contract result in construction of facilities, BHI in no way warrants or guarantees the performance of general contractor or subcontractors. BHI assumes no responsibility for the general contractor's or subcontractor's safety program (i.e., means, methods, techniques, sequences, schedules, or compliance with laws, rules, regulations, ordinances, codes, permits, or others).

BHI will not be responsible for delays or defaults in the performance of design services, which are beyond its control.

It is recognized that neither BHI nor the Client has control over the cost of labor, materials, or equipment; over the general contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, BHI cannot and does not guarantee construction cost, nor has any fixed limit of construction cost been established as a condition of this contract.

#### **ARTICLE 8. PROJECT RELATED PROVISIONS**

The Client shall provide a full title search prior to beginning work on any plat or boundary survey documents associated with the project.

#### **ARTICLE 9. SUCCESSORS AND ASSIGNS**

The Client and BHI each binds itself, its successors, assigns, and legal representatives to the other party of this contract, and to the successors, assigns, and legal representative of such other party with respect to all provisions of this contract. Neither the Client nor BHI shall assign, set over, or transfer its interest, in whole or in part, in this contract without the prior written consent of the other, nor shall any act in derogation hereof at the option of the non-assigning party, render the written contract terminated.

#### **ARTICLE 10. DISPUTES**

BHI and the Client agree that claims, disputes, and other matters in question between the parties to this contract arising out of or relating to the contract or breach thereof first be attempted to be resolved by mediation. However, if mediation is not successful, then disputes shall be resolved by litigation, unless parties mutually agree to arbitration. Any lawsuit filed shall be filed in state court in the County of Bernalillo or federal court in the District Court of New Mexico.

#### **ARTICLE 11. CONTRACT TERMINATION**

This contract may be terminated for cause by the Client upon fourteen (14) days' written notice to BHI. In the event of such termination, BHI shall be immediately paid compensation for all services performed to the termination date. Upon payment thereof, any and all obligations and liabilities of the parties hereto shall terminate. This Contract and any modification thereof may be terminated by BHI with or without cause upon fourteen (14) days' notice and BHI shall be paid compensation for services performed up to the termination date.

#### **ARTICLE 12. EXCLUSION OF DAMAGES**

In no event shall BHI be liable to Client for any indirect, incidental, special, or consequential damages, regardless of the nature of the claim.

#### **ARTICLE 13. SCOPE OF AGREEMENT**

This contract and attachments represent the entire agreement with the client. Any change to the contract terms and conditions shall be modified only by a written modification executed by both parties. No oral or written representations, inducements, or understandings of any kind or nature may modify this agreement.

#### **ARTICLE 14. INDEMNIFICATION**

Client shall indemnify, defend, and hold harmless BHI, and hereby indemnifies BHI against, any and all claims, demands, causes of action, loss, costs, damages and expenses, including reasonable attorney's fees arising out of or in connection with injuries or death to any and all persons and damages to any property to the extent or sustained in connection with, or arising out of Client's negligence or negligence of any party for which Client is legally liable.

**ARTICLE 15. SPECIAL PROVISIONS**

Special provisions, conditions, modifications, and/or schedules, which may be required, are contained in attachments or exhibits to this contract.

**BOHANNAN HUSTON, INC.**  
CONSULTANT

  
APPROVED BY (SIGNATURE)

Alan R. Benham, PE, PLS, CFedS  
APPROVED BY (PRINT NAME)

Senior Vice President  
TITLE

September 13, 2021  
DATE

CLIENT

APPROVED BY (SIGNATURE)

APPROVED BY (PRINT NAME)

TITLE

DATE

**BOHANNAN HUSTON, INC.**  
**FEE SCHEDULE HOURLY RATES**  
**AUGUST 29, 2020**

	1	2	3	4	5	6	7
<b>ENGINEER</b> Civil, Structural, Mechanical, Electrical	\$100	\$120	\$140	\$160	\$180	\$215	\$240
<b>SURVEYOR</b>	\$100	\$120	\$140	\$160	\$180	\$215	\$240
<b>TECHNICAL MANAGER</b> IT, GIS, Spatial Data, Construction, Project Manager	\$100	\$120	\$140	\$160	\$180	\$215	\$240
<b>PLANNER</b> Community, Transportation	\$95	\$105	\$120	\$135	\$155	\$190	\$230
<b>SOFTWARE DEVELOPER</b>	\$100	\$125	\$150	\$175	\$200	\$225	\$250
<b>GIS PROFESSIONAL</b> Geographic Information Systems	\$90	\$100	\$115	\$130	\$145	\$180	\$210
<b>TECHNICAL CONSULTANT</b> IT & CADD Consulting	\$90	\$110	\$125	\$135	\$145	\$155	\$175
<b>TECHNICAL SPECIALIST</b> Engineering Tech, Survey Tech, Geospatial Analyst, Graphics Specialist	\$72	\$77	\$82	\$92	\$102	\$115	\$135
<b>CONSTRUCTION OBSERVER</b>	\$70	\$75	\$80	\$90	\$105	\$120	\$160
<b>MATERIALS TECHNICIAN</b> Field and Laboratory Materials Testing	\$55	\$65	\$70	\$75	\$85	\$105	\$125
<b>ADMINISTRATIVE PROFESSIONAL</b> Administrative, Marketing, Technical Writing	\$105	\$115	\$125	\$140	\$160	\$210	\$235
<b>ADMINISTRATIVE ASSISTANT</b>	\$55	\$65	\$75	\$85	\$95	\$105	\$120

**MATERIALS AND REIMBURSABLE EXPENSES**

**Plotting, Printing and Binding** – As invoiced at cost of labor and materials.

**Courier / Delivery Service** - As invoiced by provider.

**Mileage** – Two-Wheel Drive Vehicle rate as published for the IRS Standard Mileage Rate.

Four-Wheel Drive Vehicle rate is the IRS Standard Mileage Rate plus \$0.10 per mile.

**Per Diem/Travel** – Field personnel in accordance with the latest GSA Schedule based on location of service.

Office/Professional staff travel costs, meals and lodging will be billed at cost.

**Survey Equipment Charge** - \$25.00/Hour.

**Survey Material Charge** - \$2.50/Hour.

**Expert Witness** - Rates shall be negotiated based on the requirements of the contract with a minimum of four hours while in court.

**Other Direct Project Expenses** - At Cost.

**Overtime** - Performed upon request of the client; will be invoiced at 1.30 times the standard hourly rate.

**Applicable Gross Receipts or Sales and Use Tax** - Added to all fees charged for professional services unless they are exempt and official documentation is on file with Bohannon Huston, Inc.

VILLAGE OF MAGDALENA, NEW MEXICO  
RESOLUTION NO. 2021-13

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BETWEEN THE VILLAGE OF MAGDALENA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF \$66,416, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING A NEW POLICE VEHICLE AND RELATED EQUIPMENT FOR THE GOVERNMENTAL UNIT; PROVIDING FOR THE PLEDGE AND PAYMENT OF PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM STATE LAW ENFORCEMENT PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 29-13-6, NMSA 1978; PROVIDING FOR THE DISTRIBUTION OF STATE LAW ENFORCEMENT PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; SETTING THE MAXIMUM INTEREST RATE OF THE LOAN; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

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

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State of New Mexico; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the acquisition of the Project take place by executing and delivering the Loan Agreement and Intercept Agreement; and

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Project; and

WHEREAS, the Governing Body has determined pursuant to the Act that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, other than as described in Exhibit "A" to the Loan Agreement, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the full faith and credit of the Governmental Unit or the State; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and with a first lien but not an exclusive lien, on the Pledged Revenues; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to an Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the Clerk/Treasurer this Resolution and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed by the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Governing Body intends by this Resolution to authorize the execution and delivery of the Loan Agreement in the amount and for the purposes set forth herein; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of the amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE VILLAGE OF MAGDALENA, NEW MEXICO:

Section 1. Definitions. As used in this Resolution, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, Sections 3-31-1 through 3-31-12 and Sections 29-13-1 through 29-13-9, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and Intercept Agreement, including this Resolution.



“Aggregate Annual Debt Service Requirement” means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means the Mayor, Mayor Pro Tem, and the Clerk/Treasurer.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

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

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Project.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

“Expenses” means the cost of issuance of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest, on the Loan Agreement as the same become due.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

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

“Governmental Unit” means the Village of Magdalena, New Mexico.

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

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as

determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Intercept Agreement” means the Intercept Agreement, dated the Closing Date, between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provides for the financing of the Project and requires payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet.

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

“Parity Obligations” means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet.

“Pledged Revenues” means the State Law Enforcement Protection Fund revenues enacted pursuant to Sections 29-13-6 through 29-13-9, NMSA 1978, as amended, distributed to the Governmental Unit, which is utilizing the Project and benefiting from the Loan Agreement, which distribution is made periodically by the State Treasurer pursuant to Section 29-13-6, NMSA 1978, as amended.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means the project described in Exhibit “A” to the Loan Agreement.

“Resolution” means this Resolution No. 2021-13 adopted by the Governing Body on September 27, 2021, approving the Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement as shown on the Term Sheet, as supplemented and amended from time to time.

“State” means the State of New Mexico.

“Term Sheet” means Exhibit “A” to the Loan Agreement.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Governing Body and officers of the Governmental Unit directed toward the acquisition of the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement, be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement and the Intercept Agreement. The acquisition of the Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents, and the issuance and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of acquiring the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will acquire the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from the Pledged Revenues, which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan does not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of at least a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and acquiring the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing a special, limited obligation of the Governmental Unit to pay a principal amount of \$66,416, plus interest thereon, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use the proceeds of the Loan to (i) finance the acquisition of the Project and (ii) to make a deposit to the Finance Authority Debt Service Account. The Project will be owned by the Governmental Unit.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms of the Loan Agreement and Intercept Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Loan shall be in an original aggregate principal amount of \$66,416, shall be payable in installments of principal due on May 1 of the years designated in Exhibit "B" to the Loan Agreement and bear interest payable on May 1 and November 1 of each year, beginning on May 1, 2023, at the rates designated in Exhibit "B" to the Loan Agreement.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement, as presented at the meeting of the Governing Body at which this Resolution was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement, with such changes, insertions and omissions that are consistent with this Resolution as may be approved by such individual Authorized Officers, and the Clerk/Treasurer is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Resolution and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Resolution or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues), as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Resolution, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its

general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefore to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of Acquisition of the Project.

A. Program Account and Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account to be held and maintained by the Trustee pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves the deposit of a portion of the proceeds of the Loan Agreement in the Program Account and the Finance Authority Debt Service Account all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Program Account and the Finance Authority Debt Service Account, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the purpose of acquiring the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will acquire the Project with all due diligence.

B. Completion of Acquisition of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that acquisition of and payment for the Project have been completed. As soon as practicable, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account if the amount in the Finance Authority Debt Service

Account totals a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section and any payments required by outstanding Parity Obligations, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged to, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement, subject to the uses hereof permitted by and the priorities set forth in this Resolution. The Loan Agreement constitutes an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues as set forth herein and therein and the Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement and the publication of the summary of this Resolution set out in Section 17 of this Resolution (with such changes, additions and deletions as may be necessary).

Section 12. Amendment of Resolution. Prior to the date of the initial delivery of the Loan Agreement to the Finance Authority, the provisions of this Resolution may be supplemented or amended by resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Resolution. This Resolution may be amended without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Resolution Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Resolution shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as herein provided.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 15. Repealer Clause. All bylaws, orders, resolutions, and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and the Clerk/Treasurer of the Governmental Unit, and the title and general summary of the subject matter contained in this Resolution (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and said Resolution shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Resolution shall be published in substantially the following form:

(Form of Summary of Resolution for Publication)

The Village of Magdalena, New Mexico  
Notice of Adoption of Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Resolution No. 2021-13, duly adopted and approved by the Governing Body of the Village of Magdalena, New Mexico, on September 27, 2021. A complete copy of the Resolution is available for public inspection during the normal and regular business hours of the Clerk/Treasurer, 108 N. Main Street, Magdalena, New Mexico.

The title of the Resolution is:

VILLAGE OF MAGDALENA, NEW MEXICO  
RESOLUTION NO. 2021-13

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BETWEEN THE VILLAGE OF MAGDALENA, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY, EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF \$66,416, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF ACQUIRING A NEW POLICE VEHICLE AND RELATED EQUIPMENT FOR THE GOVERNMENTAL UNIT; PROVIDING FOR THE PLEDGE AND PAYMENT OF

PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM STATE LAW ENFORCEMENT PROTECTION FUND REVENUES DISTRIBUTED BY THE STATE TREASURER TO THE GOVERNMENTAL UNIT PURSUANT TO SECTION 29-13-6, NMSA 1978; PROVIDING FOR THE DISTRIBUTION OF STATE LAW ENFORCEMENT PROTECTION FUND REVENUES TO BE REDIRECTED BY THE STATE TREASURER TO THE NEW MEXICO FINANCE AUTHORITY OR ITS ASSIGNS FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT PURSUANT TO AN INTERCEPT AGREEMENT; APPROVING THE FORM AND TERMS OF, AND OTHER DETAILS CONCERNING THE LOAN AGREEMENT AND INTERCEPT AGREEMENT; SETTING THE MAXIMUM INTEREST RATE OF THE LOAN; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND INTERCEPT AGREEMENT.

A general summary of the subject matter of the Resolution is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)



PASSED, APPROVED AND ADOPTED THIS 27<sup>th</sup> day of September, 2021.

VILLAGE OF MAGDALENA, NEW MEXICO

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

[SEAL]

ATTEST:

By \_\_\_\_\_  
Francesca Smith, Clerk/Treasurer

Trustee \_\_\_\_\_ then moved adoption of the foregoing Resolution, duly seconded by Trustee \_\_\_\_\_.

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

Those Voting Aye: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Those Voting Nay: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Those Absent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

VILLAGE OF MAGDALENA, NEW MEXICO

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

[SEAL]

ATTEST:

By \_\_\_\_\_  
Francesca Smith, Clerk/Treasurer

**EXHIBIT "A"**

Meeting Agenda  
of the September 27, 2021  
Board of Trustees Meeting

(See attached)

STATE OF NEW MEXICO  
VILLAGE OF MAGDALENA  
SOCORRO COUNTY

I, Francesca Smith, the duly qualified Clerk/Treasurer of the Village of Magdalena, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of Trustees of the Village of Magdalena, New Mexico (the "Governing Body"), constituting the governing body of the Governmental Unit had and taken at a duly called regular meeting held at the Board of Trustees, 108 N. Main Street, Magdalena, New Mexico, on September 27, 2021, at the hour of 5:00 p.m., insofar as the same relate to the execution and delivery of the proposed Loan Agreement and Intercept Agreement, copies of which are set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the Governmental Unit's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> day of November, 2021.

VILLAGE OF MAGDALENA, NEW MEXICO

By \_\_\_\_\_  
Francesca Smith, Clerk/Treasurer

[SEAL]

6054025

STATE OF NEW MEXICO  
VILLAGE OF MAGDALENA  
SOCORRO COUNTY

The Board of Trustees (the "Governing Body") of the Village of Magdalena, New Mexico, met in regular session in full conformity with law and the rules and regulations of the Governing Body at 108 N. Main Street, Magdalena, New Mexico being the meeting place of the Governing Body for the regular meeting held on the 27<sup>th</sup> day of September, 2021, at the hour of 5:00 p.m. Upon roll call, the following members were found to be present:

Present:

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Absent:

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Also Present:

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Thereupon, there was officially filed with the Clerk/Treasurer a copy of a proposed resolution in final form.

# RESOLUTION 2021-14

## The Village of Magdalena

### PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the Village of Magdalena and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be \$75,768.00 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 75% or \$56,826.00  
and
- b. The Village of Magdalena's proportional matching share shall be 25% or \$18,942.00

TOTAL PROJECT COST IS \$75,768.00

The Village of Magdalena shall pay all costs, which exceed the total amount of \$75,768.00

Now therefore, be it resolved in official session that the Board of Trustees of the Village of Magdalena determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on **December 31, 2022** and the Village of Magdalena incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the Village of Magdalena to enter into Cooperative Agreement Control Number HW2L100458 with the New Mexico Department of Transportation for LGRF Project for year **2020-2021** for pavement rehabilitation/ improvements of streets in the Village of Magdalena; furnishing bituminous and aggregate materials and preparing and treating the following street termini with these materials: 1. Oak Street: Hwy 60 to .4 miles south; 2. Duggins Drive: HWY60 to .35 miles south within the control of the Village of Magdalena in Magdalena/ Socorro County, New Mexico.

(Appropriate Signatures below (Council, Commission, School Board, Tribe, Pueblo, Nation, etc.)

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Francesca Smith, Clerk/ Treasurer

\_\_\_\_\_  
DATE

September 27, 2021

Mr. Trent Doolittle, P.E., District Engineer  
C/O Tierra Trujillo, LGRF Coordinator  
NM DOT - District One  
2912 East Pine Street  
Deming, NM 88030

RE: FY20-21 Cooperative Agreement  
Contract No. (D18691)  
Vendor No. (0000054348)  
Project No. (XXXXXX)  
Control No. (HW2 L100458)

Dear Mr. Doolittle:

The Village of Magdalena would like to request a time extension on the above listed project from December 31, 2021 to December 31, 2022. The Scope of Work will remain the same. The Village of Magdalena is requesting additional time to complete the project due to weather and COVID-19, materials have been hard to acquire.

Please find attached a revised signed resolution.

Should you require further information, or have any questions, do not hesitate to contact our office.

Sincerely,

Francesca Smith  
Clerk/ Treasurer  
Village of Magdalena  
PO Box 145  
108 N. Main Street  
Magdalena, NM 87825  
Ph (575) 854-2261  
Fax (575) 854-2273  
[www.villageofmagdalena.com](http://www.villageofmagdalena.com)

Attachments