



VILLAGE OF MAGDALENA
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AGENDA
NOTICE OF REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES
TUESDAY, MAY 26, 2020
VILLAGE HALL 108 N. MAIN STREET 6:00 PM

DUE TO THE NATIONAL, STATE AND COUNTY COVID-19 DECLARED EMERGENCY AND PUBLIC HEALTH ORDER DATED MARCH 23, 2020 LIMITING GATHERINGS TO LESS THAN 5 PERSONS THE MEETING WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC. ALL MEMBERS OF THE PUBLIC WILL BE ABLE TO ATTEND AND LISTEN TO THE MEETING VIA FACEBOOK LIVE AT THE FOLLOWING LINK: facebook.com/villageofmagdalenaofficial

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES
 - a. REGULAR MEETING – MAY 11, 2020
 - b. SPECIAL WORK SESSION – MAY 18, 2020
6. APPROVAL OF CASH BALANCE REPORT
7. APPROVAL OF BILLS
8. MAYOR'S REPORT
9. CLERK'S REPORT
10. DISCUSSION & POSSIBLE DECISION CONCERNING APPROVAL OF FISCAL YEAR 2020-2021 BUDGET
11. DISCUSSION & POSSIBLE DECISION CONCERNING APPROVAL OF AUDIT CONTRACT WITH BEASLEY, MITCHELL & CO., LLP
12. PUBLIC INPUT – 1 TOPIC PER PERSON - 3 MINUTE LIMIT
PUBLIC COMMENT MAY BE MADE VIA EMAIL AND WILL BE ENTERED AND/OR READ INTO THE MEETING MINUTES (IF LESS THAN 3 MINUTES) BY EMAILING COMMENTS TO: mayor@villageofmagdalena.com THE DEADLINE FOR WRITTEN PUBLIC COMMENTS TO BE RECEIVED IS TUESDAY, MAY 26, 2020 AT 12:00 PM. EMAILED PUBLIC COMMENT MUST CONTAIN THE AUTHOR'S NAME AND PHYSICAL ADDRESS.
13. 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. 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.

**MINUTES OF THE REGULAR MEETING OF THE VILLAGE OF MAGDALENA
BOARD OF TRUSTEES
HELD MONDAY, MAY 11, 2020 AT 6:00 PM**

DRAFT

**DUE TO THE NATIONAL, STATE AND COUNTY COVID-19 DECLARED EMERGENCY AND PUBLIC HEALTH ORDER DATED MARCH 23, 2020 LIMITING GATHERINGS TO LESS THAN 5 PERSONS THE MEETING WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC. ALL MEMBERS OF THE PUBLIC WILL BE ABLE TO ATTEND AND LISTEN TO THE MEETING VIA FACEBOOK LIVE AT THE FOLLOWING LINK:
[facebook.com/villageofmagdalenaofficial](https://www.facebook.com/villageofmagdalenaofficial)**

Mayor Richard Rumpf called the meeting to order at 6:01 p.m.

PRESENT: Mayor Richard Rumpf, Clark Brown, Deborah Abingdon – Clerk/Treasurer, Kathy Stout – Attorney

Participating via Video Conference: Trustees James Nelson, Harvan Conrad, Donna Dawson

GUESTS: Carleen Gomez - Deputy Clerk

Mayor Richard Rumpf requested that all participating, recite the Pledge of Allegiance.

APPROVAL OF AGENDA: Mr. Brown made a motion to approve the agenda as presented, seconded by Ms. Dawson. The motion carried unanimously.

APPROVAL OF MINUTES: Ms. Dawson made a motion to approve the minutes of the Regular Meeting held on April 27, 2020, as presented, seconded by Mr. Brown. The motion carried unanimously.

APPROVAL OF CASH BALANCE REPORT: Ms. Dawson made a motion to approve the cash balance report, as presented, seconded by Mr. Nelson. The motion carried unanimously.

APPROVAL OF BILLS: Deputy Clerk Gomez said that a Lowe’s bill which had to be paid before the next meeting, came in after the posting of the agenda. The bill totaled \$2,940.34 and was broken down as follows: \$2,649.13 for park equipment, \$55.93 for water supplies, and \$235.28 for water tools.

Mr. Nelson made a motion to approve the bill list with the addition of the Lowe’s bill. The motion was seconded by Ms. Conrad. The motion carried unanimously.

Office of the Courts	\$30.00	City of Socorro Tipping Fees	\$11,121.57
Motorola Solutions	\$67.76	Nance, Pato & Stout LLC	\$ 638.25
NM Judicial Ed Ctr.	\$15.00	O’Reilly Auto Parts	\$280.79

REB Management	\$2,135.65	Romero's Tires	\$1,246.20
Sierra Propane	\$226.45	Verizon Wireless	\$929.64
WEX Bank	\$1,351.67	Williams Windmill	\$78.00
WNM Communications	\$959.00		

MAYOR'S REPORT

Mayor Rumpf reported that things are slowly opening, and the community seems aware of social distancing rules. He added that the Village had just received a Recycling & Illegal Dumping Grant totaling \$12,520.00. This will be used to help clean up old tires and debris in the Village.

CLERK'S REPORT

The Village's Third Quarter Report was completed and submitted to the state and accepted. We will be discussing this report at our budget workshop.

On Wednesday, May 6th, the Deputy Clerk discovered that an unapproved charge had been made on her Village of Magdalena issued credit card. Upon further investigation, the Wells Fargo Fraud Department determined that the unauthorized user had used the card online to purchase food at an Albuquerque fast food restaurant. The card was immediately cancelled, and a replacement will be issued.

2019 Audit

Our 2019 audit is still in progress.

Mayor Rumpf has selected a new firm to conduct our 2020 audit. This firm is not yet under contract but expected to be by the May 15th State-imposed deadline.

Budget

- We need to select a time for a budget workshop.
- May 26th - Budget presented to Council for approval.
- June 1st - Initial budget due to the State.

Ms. Dawson asked if the final audit contract came before the Board? The Mayor responded that it would.

DEPARTMENT REPORTS

- EMS** – A report was submitted by Jim Nelson and reviewed by the Mayor and Board.
- FIRE** - Mayor Rumpf reported that there was one smoke check on Highway 169.
- MARSHAL** – A report was submitted by Marshal Michael Zamora and reviewed by the Mayor and Board.
- JUDGE** – A report was submitted by Municipal Judge Simon Armijo and Deputy Clerk/Court Clerk Carleen Gomez. The report was reviewed by the Mayor and Board.
- PUBLIC WORKS** – A report was submitted by Joint Utility Worker Nehemiah Peralta and reviewed by the Mayor and Board.

- f. **LIBRARY** – A report was submitted by Librarian Ivy Stover and reviewed by the Mayor and Board.

DISCUSSION & POSSIBLE DECISION CONCERNING RESCHEDULING THE NEXT REGULAR MEETING

Ms. Conrad moved that the next Regular Council meeting be held on Tuesday, May 26th at 6 p.m., the motion was seconded by Ms. Dawson.

The motion carried unanimously.

DISCUSSION & POSSIBLE DECISION CONCERNING SCHEDULING OF BUDGET WORKSHOP

Ms. Dawson moved that a budget workshop/meeting be held on May 15th at 9:00 a.m. The motion was seconded by Ms. Conrad. The motion carried unanimously.

DISCUSSION & POSSIBLE DECISION CONCERNING REQUEST FOR LODGER'S TAX FUNDING FOR MAGDALENA OLD TIMER'S REUNION SIGNS

A request was made by community member Nina McCabe on behalf of the Magdalena Old Timer's Reunion Committee. The non-profit is asking for \$355.00 for signage for the annual event. Clerk Abingdon told the council that there was \$1,494.20 available in the fund. Ms. Dawson abstained from voting as she is the organization's treasurer. Ms. Conrad and Mr. Clark voted to approve the request and Mr. Nelson voted not to fund the request. The motion carried by majority.

DISCUSSION & POSSIBLE DECISION CONCERNING APPROVAL OF ISSUING AN INVITATION TO BID FOR MUNICIPAL AIRPORT RUNWAY SAFETY AREA GRADING PROJECT.

Clerk Abingdon told the council that the project would be funded 100% primarily using Federal funds and some State money. The Village of Magdalena is not required to provide funds for this project.

Ms. Dawson moved to approve of issuing an invitation to bid for the airport grading project, Mrs. Conrad seconded the motion. The motion carried unanimously.

PUBLIC INPUT –1 TOPIC PER PERSON – 3 MINUTE LIMIT

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Mayor Rumpf reported that he had not received any inquiries from the public.

Ms. Dawson moved to adjourn the meeting at 6:20 p.m., the motion was seconded by Mr. Brown. The motion carried unanimously.

Respectfully Submitted,

Deborah Abingdon
Clerk/Treasurer

Richard Rumpf
Mayor

**MINUTES OF THE SPECIAL WORK SESSION OF THE VILLAGE OF MAGDALENA
BOARD OF TRUSTEES
HELD MONDAY, MAY 18, 2020 AT 11:00 AM**

DRAFT

**DUE TO THE NATIONAL, STATE AND COUNTY COVID-19 DECLARED EMERGENCY AND PUBLIC HEALTH ORDER DATED MARCH 23, 2020 LIMITING GATHERINGS TO LESS THAN 5 PERSONS THE MEETING WILL NOT BE PHYSICALLY OPEN TO THE PUBLIC. ALL MEMBERS OF THE PUBLIC WILL BE ABLE TO ATTEND AND LISTEN TO THE MEETING VIA FACEBOOK LIVE AT THE FOLLOWING LINK:
[facebook.com/villageofmagdalenaofficial](https://www.facebook.com/villageofmagdalenaofficial)**

Mayor Richard Rumpf called the meeting to order at 11:00 a.m.

PRESENT: Mayor Richard Rumpf, Clark Brown, Deborah Abingdon – Clerk/Treasurer, Kathy Stout – Attorney

Participating via Video Conference: Trustees James Nelson, Harvan Conrad, Donna Dawson

GUESTS: State Senator Gabriel Ramos, State Representative Gail Armstrong, Carleen Gomez - Deputy Clerk

Mayor Richard Rumpf asked that Representative Gail Armstrong lead us in the Pledge of Allegiance.

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

DISCUSSION & POSSIBLE DECISION CONCERNING APPROVAL OF FISCAL YEAR 2021 INTERIM BUDGET

Mayor Rumpf introduced guests, State Senator Gabriel Ramos and Representative Gail Armstrong.

The Mayor shared a list of Village projects that are ongoing. These included: Federally funded airport improvements, a recently awarded solid waste grant to cover the disposal of old tires, the ongoing water well project, and plans for maintaining Village of Magdalena properties. The Mayor then thanked Michael Steininger and Village staff for their efforts on the budget. He then gave thanks to Senator Ramos and Representative Armstrong for their efforts to secure funding for a new trash truck and street improvements.

Clerk Abingdon introduced herself and gave thanks to Michael Steininger and Deputy Clerk Gomez for their roles in preparing the budget.

Clerk Abingdon announced that the General Fund was projected to run a deficit.

She then offered a review of current revenue and pointed out that Gross Receipts Tax income had averaged \$ 15,688.56 for the months of July through April. She explained that additional income is derived from property taxes and franchised fees, but that the bulk of Village of

Magdalena revenue comes from the Small Cities Assistance Fund which is provided by the State.

The discussion then turned to Trustees for questions.

James Nelson

Question: Where is the General Fund deficit shown on the worksheet?

Response: Page 11 of the worksheet packet.

Q: Pg 2 top, elected official salaries?

R: Wages still need to be updated in the budget.

Q: Pg 2, line 50020, why are FTE salaries so small (oh, judicial. Then why so large?)

R: Wages still need to be updated in the budget.

Q: Pg 4, line 52050 dues subs, memberships, why are they so high?

R: Items such as COG, NMML, and Tyler Tech are included in this list of expenses.

Q: Pg 8, line 55030 Big change in allocation.

R: Past street projects may have been reflected here.

Q: Pg 10, line 55010

R: There was damage done at the airport and an insurance claim was filed.

Q: Pg 11 - General Fund is negative, is that acceptable?

R: The deficit should be absorbable and is acceptable by State standards.

Q: Pg 24, line 90001, explain.

R: This was a transfer in of funds to cover Village allocated library funds and was addressed in a recent Budget Adjustment Resolution.

Q: Pg 25, lines 42500 & 59305, explain.

R: This pertains to water projects. Final numbers have not yet come in on these projects.

R: 59305 pertains to street projects.

Q: Pg 28, line 59304, explain.

This water meter replacement project is now closed.

Q: Pg 31, line 58190, why so much? 4 x 400 is 1600.

R: This entry will be changed back to \$1,600.00.

Donna Dawson

Q: Is the Village paying property taxes?

R: No, the property taxes shown were listed as revenue.

Q: Pg 8, line 50020 shows salaries of \$2,350.00.

R: The amount shown was listed in the prior year's budget and not being requested for the upcoming year.

Harvan Conrad

Q: Fund 500 AMBULANCE FUND Pg 30, line 52060 EMPLOYEE TRAINING: Why the significant increase? R: This covered EMT training classes.

Q: Fund 502 SOLID WASTE FUND Expenditures Pages 35 – 37: Are the past due payments to Socorro for waste disposal included in the expenditures for the budget?

R: Yes, we did a budget transfer which included funds to cover part of the past due tipping fees owed to the City of Socorro.

Q: There are various expenditures labeled “Other” For example: Page 17 Fund 209 FIRE PROTECTION FUND, line 58200 OTHER PROFESSIONAL SERVICES, Page 30 AMBULANCE FUND, line 53120 SUPPLIES OTHER: Are these “Other” expenditures adequately defined so that we can provide necessary documentation in the event of an audit or other such budget reviews?

R: Our accounting software does have the capability of expanding line item descriptions and it is reflective of the state system.

Representative Gail Armstrong

Q: Does our gas tax revenue appear to be stable?

R: Yes, the amount of gas tax revenue coming in appears to be consistent.

Discussion

- The Mayor asked the Trustees to approve a 2% cost of living increase for employees. Mr. Steininger said that he would prepare those numbers and update the system.
- Clerk Abingdon explained that although it was not an ideal situation, it was acceptable to operate with a projected deficit.
- The Mayor agreed that we would be watching our budget and the amount of Gross Receipts Tax coming in.
- Mr. Steininger said that he thought that our GRT will probably not be greatly impacted and said the in his opinion, the \$107,000.00 deficit was absorbable. He added that we should continue to monitor our spending.
- Senator Gabriel Ramos commended the Village on how well things were being run during this challenging time.
- Representative Gail Armstrong assured us that she is working to get us funds through the Junior fund and that if we are not able to secure the trash truck funds, to let her know.
- Mayor Rumpf said that the requested changes would be made, and that the Council would be presented with the budget changes at the May 26th, 2020 regular meeting.
- Trustee Dawson asked for a detailed payroll accounting to include fringe benefits.

PUBLIC INPUT –1 TOPIC PER PERSON – 3 MINUTE LIMIT

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Mayor Rumpf reported that he had not received any inquiries from the public.

Ms. Dawson moved to adjourn the meeting at 11:47 p.m., the motion was seconded by Mr. Nelson. The motion carried unanimously.

Respectfully Submitted,

Deborah Abingdon
Clerk/Treasurer

Richard Rumpf
Mayor

May 26th Meeting

Clerk's Report

2019 Audit

Rice & Associates Auditors are returning to the Village to resume work on the 2019 audit. Once approved, the new audit firm will be working under the proposed timeline for the 2020 audit:

- Planning June 2020
- Fieldwork Week (1week) September 21, 2020
- Preliminary Draft November 23, 2020
- Submit to State Auditor December 4, 2020

Interim Budget

- ❖ Once Council approves the interim budget, it will be submitted to the state.
- ❖ The final budget along with the June 30th Quarterly Report as well as any additional Budget Adjustment Resolutions will be due by July 31st.
- ❖ We may need to schedule a special meeting of the Council at the end of July.

Airport

Current FAA Project

- The FAA will be providing approximately \$166,000.00 in funding for the excavation of the runway safety area at the airport.
- The state will be assisting with funding for the project. They will pay approximately \$16,000.00. These funds are already encumbered.
- The village is not being required to provide matching funds.
- Bids will be opened on June 2, 2020.
- Engineers from Bohannon Huston will take a few days to evaluate the bids and then make a recommendation.
- We will then be asking Trustees to give permission to submit the FAA grant application.
- At the same meeting, we ask trustees permission for the Mayor to sign the grant offer when it comes in.
- Work at the airport should start sometime in July and take about 45 days. The airport will be closed during this time.

Cares Grant

We are eligible for a \$1,000.00 Cares Grant. This can be used for maintenance. Our airport engineer suggests that we put that money towards repairing the roof of the pilot's lounge. We have a quote of \$4,200.00. The State Aviation Division of DOT has indicated that they should be able to fund the rest of the cost of the repairs.

State of New Mexico
Local Government Budget Management System (LGBMS)

Budget Recap -
- Interim - Entity

Printed from LGBMS on 2020-05-21 10:31:50

Fund	Cash	Investments	Revenues	Transfers	Expenditures	Balance	Reserves	Adjusted Balance
11000 General Operating Fund	209,647.00	0.00	393,559.00	-38,942.00	509,871.00	54,393.00	42,489.25	11,903.75
20100 Corrections	26,464.00	0.00	6,168.00	0.00	0.00	32,632.00	0.00	32,632.00
20200 Environmental	0.00	0.00	4,387.00	0.00	0.00	4,387.00	0.00	4,387.00
20900 Fire Protection	19,475.00	0.00	61,667.00	-17,067.00	44,573.00	19,502.00	0.00	19,502.00
21100 Law Enforcement Protection	0.00	0.00	21,200.00	-12,930.00	8,270.00	0.00	0.00	0.00
21400 Lodgers' Tax	2,356.00	0.00	3,937.00	0.00	2,975.00	3,318.00	0.00	3,318.00
30300 State Legislative Appropriation Project	0.00	0.00	253,071.00	18,942.00	272,013.00	0.00	0.00	0.00
40400 NMFA Loan Debt Service	0.00	0.00	626.00	55,839.00	56,096.00	369.00	0.00	369.00
50100 Water Enterprise	14,048.00	0.00	236,783.00	-8,900.00	187,317.00	54,614.00	0.00	54,614.00
50200 Solid Waste Enterprise	82,144.00	0.00	139,677.00	-8,471.00	160,156.00	53,194.00	0.00	53,194.00
50300 Wastewater/Sewer Enterprise	17,811.00	0.00	71,572.00	-8,471.00	67,704.00	13,208.00	0.00	13,208.00
50500 Ambulance Enterprise	13,832.00	0.00	17,514.00	0.00	17,169.00	14,177.00	0.00	14,177.00
52400 Museum/Library Enterprise	0.00	0.00	11,944.00	20,000.00	31,482.00	462.00	0.00	462.00
79900 Other Trust & Agency	23,941.00	0.00	2,775.00	0.00	2,775.00	23,941.00	0.00	23,941.00
Totals	409,718.00	0.00	1,224,880.00	0.00	1,360,401.00	274,197.00	42,489.25	231,707.75

STATE OF NEW MEXICO AUDIT CONTRACT

Village of Magdalena

hereinafter referred to as the "Agency," and

Beasley, Mitchell & Co., LLP

hereinafter referred to as the "Contractor," agree:

As required by the Audit Rule, NMAC Section 2.2.2.1 et seq., Contractor agrees to, and shall, inform the Agency of any restriction placed on Contractor by the Office of the State Auditor pursuant to NMAC Section 2.2.2.8, and whether the Contractor is eligible to enter into this Contract despite the restriction.

1. SCOPE OF WORK (Include in Paragraph 25 any expansion of scope)

A. The Contractor shall conduct a financial and compliance audit of the Agency for Fiscal Year 2020 in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, the Audit Act and the Audit Rule (NMAC Section 2.2.2.1 et seq.).

2. DELIVERY AND REPRODUCTION

A. In order to meet the delivery terms of this Contract, the Contractor shall deliver the following documents to the State Auditor on or before the deadline set forth for the Agency in NMAC Section 2.2.2.9:

1. an organized, bound and paginated hard copy of the Agency's audit report for review;
2. a copy of the signed management representation letter provided to the IPA by the Agency as required by AU-C580; and
3. a copy of the completed State Auditor Report Review Guide available at www.osanm.org;

B. Reports postmarked by the Agency's due date will be considered received by the due date for purposes of NMAC Section 2.2.2.9. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor and the State Auditor may take action in accordance with NMAC Section 2.2.2.13. If the State Auditor does not receive copies of the management representation letter and the completed Report Review Guide with the audit report or prior to submittal of the audit report, the State Auditor will not consider the report submitted to the State Auditor.

C. As soon as the Contractor becomes aware that circumstances exist that will make the Agency's audit report late, the Contractor shall immediately provide written notification of the situation to the State Auditor. The notification shall include an explanation regarding why the audit report will be late, when the IPA expects to submit the report and a concurring signature by the Agency.

D. Pursuant to NMAC Section 2.2.2.10, the Contractor shall prepare a written and dated engagement letter that identifies the specific responsibilities of the Contractor and the Agency.

E. After its review of the audit report pursuant to NMAC Section 2.2.2.13, the State Auditor shall authorize the Contractor to print and submit the final audit report. Within five business days after the date of the authorization to print and submit the final audit report, the Contractor shall provide the State Auditor an electronic version of the audit report, in PDF format, and the electronic copy of the Excel version of the Summary of Findings Form, Vendor Schedule, Fund Balances, and any GASB 77 data (if applicable). After the State Auditor officially releases the audit report by issuance of a release letter, the Contractor shall deliver 10 copies of the audit report to the Agency. The Agency or Contractor shall ensure that every member of the Agency's governing authority shall receive a copy of the report.

F. The Agency, upon delivery of its audit report, shall submit to the Federal Audit Clearinghouse (FAC) the completed dated collection form and the reporting package described in Section 200.512 of Uniform Guidance for Federal Awards. The submission is required to be made within 30 calendar days of receipt of the auditor's report, or nine months after the end of the audit period.

3. COMPENSATION

- A. The total amount payable by the Agency to the Contractor under this Contract shall not exceed **\$15,922.00** including applicable gross receipts tax.
- B. Contractor agrees not to, and shall not, perform any services in furtherance of this Contract prior to approval by the State Auditor. Contractor acknowledges and agrees that it will not be entitled to payment or compensation for any services performed by Contractor pursuant to this Contract prior to approval by the State Auditor.
- C. Total Compensation will consist of the following:

SERVICES	AMOUNTS
(1) Financial statement audit	\$10,290.00
(2) Federal single audit	\$0.00
(3) Financial statement preparation	\$4,410.00
(4) Other nonaudit services, such as depreciation schedule updates	\$0.00
(5) Other (i.e., component units, specifically identified)	\$0.00

Gross Receipts Tax = **\$1,222.00**Total Compensation = **\$15,922.00** including applicable gross receipts tax

- D. The Agency shall pay the Contractor the New Mexico gross receipts tax levied on the amounts payable under this Contract and invoiced by the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below.
- E. The State Auditor may authorize progress payments to the Contractor by the Agency; provided that the authorization is based upon evidence of the percentage of audit work completed as of the date of the request for partial payment. Progress payments up to 70% do not require State Auditor approval, provided that the Agency certifies receipt of services. The Agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed prior to making such payment. Progress payments of 70% or more but less than or equal to 90% require State Auditor approval after being approved by the Agency. If requested by the State Auditor, the Agency shall provide a copy of the approved progress billings. The State Auditor may allow only the first 50% of progress payments to be made without State Auditor approval if the Contractor's previous audits were submitted after the due date. Final payment for services rendered by the Contractor shall not be made until a determination and written finding is made by the State Auditor in the release letter that the audit has been made in a competent manner in accordance with the provisions of this Contract and applicable rules of the State Auditor.
4. **TERM.** Unless terminated pursuant to Paragraphs 5 or 19, this Contract shall terminate one calendar year after the latest date on which it is signed.

5. TERMINATION, BREACH AND REMEDIES

- A. This Contract may be terminated:
1. By either party without cause, upon written notice delivered to the other party and the State Auditor at least ten (10) days prior to the intended date of termination.
 2. By either party, immediately upon written notice delivered to the other party and the State Auditor, if a material breach of any of the terms of this Contract occurs. Unjustified failure to deliver the report in accordance with Paragraph 2 shall constitute a material breach of this Contract.
 3. By the Agency pursuant to Paragraph 19, immediately upon written notice to the Contractor and the State Auditor.
 4. By the State Auditor, immediately upon written notice to the Contractor and the Agency after determining that the audit has been unduly delayed, or for any other reason.
- B. By termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. If the Agency or the State Auditor terminates this Contract, the Contractor shall be entitled to compensation for work performed prior to termination in the amount of earned, but not yet paid, progress payments, if any, that the State Auditor has authorized to the extent required by Paragraph 3(E). If the Contractor terminates this Contract for any reason other than Agency's breach of this Contract, the Contractor shall repay to the Agency the full amount of any progress payments for work performed under the terms of this Contract.
- C. Pursuant to NMAC Section 2.2.2.8, the State Auditor may disqualify the Contractor from eligibility to contract for audit services with the State of New Mexico if the Contractor knowingly makes false statements, false assurances or false disclosures under this Contract. The State Auditor on behalf of the Agency or the Agency may bring a civil action for damages or any other relief against a Contractor for a material breach of this Contract.

D. THE REMEDIES HEREIN ARE NOT EXCLUSIVE, AND NOTHING IN THIS SECTION 5 WAIVES OTHER LEGAL RIGHTS AND REMEDIES OF THE PARTIES.

6. STATUS OF CONTRACTOR

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles or any other benefits afforded to employees of the Agency as a result of this Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed under this Contract unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract.

8. SUBCONTRACTING

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the Agency and the State Auditor. An agreement between the Contractor and a subcontractor to subcontract any portion of the services under this Contract shall be completed on a form prescribed by the State Auditor. The agreement shall be an amendment to this Contract and shall specify the portion of the audit services to be performed by the subcontractor, how the responsibility for the audit will be shared between the Contractor and the subcontractor, the party responsible for signing the audit report and the method by which the subcontractor will be paid. Pursuant to NMAC Section 2.2.2.8, the Contractor may subcontract only with independent public accounting firms that are on the State Auditor's List of Approved Firms, and that are not otherwise restricted by the Office from entering into such a contract.

9. RECORDS

The Contractor shall maintain detailed time records that indicate the date, time, and nature of services rendered during the term of this Contract. The Contractor shall retain the records for a period of at least five (5) years after the date of final payment under this contract. The records shall be subject to inspection by the Agency and the State Auditor. The Agency and the State Auditor shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the Agency or the State Auditor on behalf of the Agency to recover excessive or illegal payments.

10. RELEASE

The Contractor, upon receiving final payment of the amounts due under the Contract, releases the State Auditor, the Agency, their respective officers and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract. This paragraph does not release the Contractor from any liabilities, claims or obligations whatsoever arising from or under this Contract.

11. CONFIDENTIALITY

All information provided to or developed by the Contractor from any source whatsoever in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor, except in accordance with this Contract or applicable standards, without the prior written approval of the Agency and the State Auditor.

12. PRODUCT OF SERVICES; COPYRIGHT AND REPORT USE

Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. The Agency and the State Auditor may post an audited financial statement on their respective websites once it is publicly released by the State Auditor. For District Courts and District Attorneys only, the contractor agrees that the Financial Control Division of the Department of Finance and Administration (DFA) is free to use the audited financial statements in the statewide Comprehensive Annual Financial Report (CAFR) and that the Contractor's audit report may be relied upon during the audit of the statewide CAFR, if applicable. However, DFA should not provide to any third party, other than the CAFR auditor, the District Courts' or District Attorneys' draft audit reports or their opinion letters or findings.

13. CONFLICT OF INTEREST

The Contractor represents and warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. Each of the Contractor and the Agency certifies that it has followed the requirements of the Governmental Conduct Act, Section 10-16-1, et seq., NMSA 1978, regarding contracting with a public officer, state employee or former state employee, as required by the applicable professional standards.

14. INDEPENDENCE

The Contractor represents and warrants its personal, external and organizational independence from the Agency in accordance with the *Government Auditing Standards 2011 Revision*, issued by the Comptroller General of the United States, and NMAC Section 2.2.2.8. The Contractor shall immediately notify the State Auditor and the Agency in writing if any impairment to the Contractor's independence occurs or may occur during the period of this Contract.

15. AMENDMENT

This Contract shall not be altered, changed or amended except by prior written agreement of the parties and with the prior written approval of the State Auditor. Any amendments to this Contract shall comply with the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978.

16. MERGER

This Contract supersedes all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract. Contractor and Agency shall enter into and execute an engagement letter pursuant to NMAC Section 2.2.2.10, consistent with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAGAS). The engagement letter and any associated documentation included with or referenced in the engagement letter shall not be interpreted to amend this Contract. Conflicts between the engagement letter and this Contract are governed by this Contract, and shall be resolved accordingly.

17. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Contract. By execution of this Contract, Contractor irrevocably consents to the exclusive personal jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising from or related to this Contract.

18. AGENCY BOOKS AND RECORDS

The Agency is responsible for maintaining control of all books and records at all times and the Contractor shall not remove any books and records from the Agency's possession for any reason.

19. APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the legislature or the Agency's governing body for the performance of this Contract. If sufficient appropriations and authorization are not made by the legislature or the Agency's governing body, this Contract shall terminate upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. This section of the Contract does not supersede the Agency's requirement to have an annual audit pursuant to Section 12-6-3(A) NMSA 1978.

20. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. EQUAL OPPORTUNITY COMPLIANCE

The Contractor shall abide by all federal and state laws, 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, rules, regulations and orders, the Contractor assures that no person in the United States shall, on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition, spousal affiliation, sexual orientation or gender identity be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Contract. If the Contractor is found not to be in compliance with these requirements during the life of this Contract, the Contractor shall take appropriate steps to correct these deficiencies.

22. WORKING PAPERS

A. The Contractor shall retain its working papers of the Agency's audit conducted pursuant to this Contract for a period of at least five (5) years after the date shown on the opinion letter of the audit report, or longer if requested by the federal cognizant agency for audit, oversight agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor, the Contractor shall deliver the original or clear, legible copies of all working papers to the requesting entity.

B. The Contractor should follow the guidance of AU-C 210 A.27 to A.31 and AU-C 510 .A3 to .A11 in communications with the predecessor auditor and to obtain information from the predecessor auditor's audit documentation.

23. DESIGNATED ON-SITE STAFF

The Contractor's on-site individual auditor responsible for supervision of work and completion of the audit is Dahlia Garcia. The Contractor shall notify the Agency and the State Auditor in writing of any changes in staff assigned to perform the audit.

24. INVALID TERM OR CONDITION

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected.

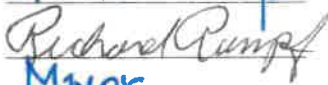
25. OTHER PROVISIONS

SIGNATURE PAGE

This Contract is made effective as of the date of the latest signature.


AGENCY

Village of Magdalena

PRINTED NAME: Richard Rumpf
SIGNATURE: 
TITLE: Mayor
DATE: May 13, 2020

CONTRACTOR

Beasley, Mitchell & Co., LLP

PRINTED NAME: Brad Beasley
SIGNATURE: 
TITLE: Partner
DATE: 5/14/2020

State Auditor Contract No. 20 - 6118