



# VILLAGE OF MAGDALENA INVITATION TO BID No. 2017-01-101

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Street Repair: Elm Street, Spruce Street, & Pine Street

## Contents

ADVERTISEMENT FOR BIDS .....	5
I. INTRODUCTION .....	6
A. Purpose of this Invitation to Bid .....	6
B. Summary Scope of Work .....	6
C. Scope of Procurement .....	6
D. Procurement Manager .....	6
E. Definition of Terminology .....	7
F. Resident/Veteran Business Preference .....	8
1. Resident Business Preference .....	8
2. Resident Veterans Preference .....	9
G. Procurement Library .....	9
II. CONDITIONS GOVERNING THE PROCUREMENT .....	10
A. SEQUENCE OF EVENTS .....	10
B. EXPLANATION OF EVENTS .....	10
1. Issue ITB .....	10
2. Return of “Acknowledgment of Receipt” Form for Distribution List .....	10
3. Pre-Bid Conference .....	11
4. Deadline to submit additional written questions .....	11
5. Response to written questions/ITB Amendments .....	11
6. Submission of Bids .....	11
7. Public Opening .....	12
8. Bid Tabulation .....	12
9. Contract Award .....	12
10. Protest Deadline .....	12
C. GENERAL REQUIREMENTS .....	13
1. Acceptance of Conditions Governing the Procurement .....	13
2. Incurring Cost .....	13
3. Prime Contractor Responsibility .....	13
4. Subcontractors .....	13
5. Amended Bids .....	13
6. Bidders’ Rights to Withdraw Bid .....	14
7. Bid Offer Firm .....	14
8. No Obligation .....	14
9. Termination .....	14
10. Sufficient Appropriation .....	14
11. Legal Review .....	14
12. Governing Law .....	15
13. Basis for Bid .....	15
14. Contract Terms and Conditions .....	15
15. Bidder Qualifications .....	15
16. Right to Waive Minor Irregularities .....	15
17. Change in Contractor Representatives .....	15
18. Notice .....	16
19. Village Rights .....	16
20. Ownership of Bids .....	16

21.	Ambiguity, Inconsistency or Errors in ITB .....	16
22.	Competition .....	16
23.	Use by Other Government Entities.....	16
24.	Confidentiality .....	16
25.	Delivery & Failure to Meet Order Provisions .....	17
26.	Discounts .....	17
27.	Village Furnished Property.....	17
28.	Packing, Shipping, & Invoicing .....	17
29.	Electronic mail address required .....	18
30.	Use of Electronic Versions of this ITB .....	18
31.	Award Rights.....	18
32.	Deliver .....	18
33.	Addenda.....	18
34.	Insurance.....	18
35.	Prequalification Rule .....	19
III.	RESPONSE FORMAT AND ORGANIZATION .....	20
A.	NUMBER OF RESPONSES .....	20
B.	NUMBER OF COPIES.....	20
C.	BID CONTENTS .....	20
D.	BID FORMAT .....	21
E.	BID SUBMITTAL REQUIREMENTS .....	21
IV.	SPECIFICATIONS AND REQUIREMENTS .....	22
A.	INFORMATION.....	22
1.	Restrictive Specifications .....	22
2.	Use of Brand Names and Numbers .....	22
3.	Equivalent Items Bid .....	22
4.	Special Conditions.....	22
5.	Response to Requirements.....	22
B.	MANDATORY REQUIREMENTS .....	23
C.	OTHER REQUIREMENTS.....	25
V.	BID OPENING, PROCESSING AND AWARD.....	26
A.	BID RECEIPT.....	26
B.	BID OPENING .....	26
C.	EVALUATION PROCESS.....	26
D.	AWARD AND ORDER PROCESS .....	27
1.	Contract Award.....	27
2.	Order(s).....	27
APPENDIX A	.....	29
	ACKNOWLEDGEMENT OF RECEIPT FORM .....	29
APPENDIX B	.....	30
	SCOPE OF WORK.....	30
APPENDIX C	.....	32
	BID FORM .....	32
APPENDIX D	.....	35
	LETTER OF TRANSMITTAL FORM .....	35
APPENDIX E	.....	36

CAMPAIGN CONTRIBUTION DISCLOSURE FORM .....	36
APPENDIX F.....	39
RESIDENT VETERANS PREFERENCE CERTIFICATION .....	39
APPENDIX G.....	40
BID SUBMITTAL CHECKLIST.....	40
APPENDIX H.....	41
LIST OF PROPOSED SUBCONTRACTORS .....	41
APPENDIX I .....	43
PURCHASE AGREEMENT CONTRACT .....	43

# **ADVERTISEMENT FOR BIDS**

## **INVITATION TO BID**

**ITB #2017-01-101**  
**STREET REPAIR**

**Commodity Codes: 74511, 74512, 74570, 74584, 75510**

Village of Magdalena, State of New Mexico, is requesting sealed bids for the repair of Elm Street, Spruce Street, & Pine Street.

Bids may be held for ninety (90) days subject to all action by the Village. Village of Magdalena reserves the right to reject any and all bids in part or in whole. A completed bid package shall be submitted in a sealed container indicating the ITB title and number along with the Offeror's name and address clearly marked on the outside of the container **All bids must be received by the deadline of 11:00 AM (Mountain Time) on Wednesday, September 13<sup>th</sup>, 2017** at Village Hall, 108 N. Main Street, Magdalena, New Mexico at which time and place the bid opening will start.

By submitting a bid for the requested services/items each Bidder is certifying that its bid complies with regulations and requirements stated within the Invitation to Bid.

**ANY BID PACKAGE RECEIVED BY THE PURCHASING DIVISION AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY VILLAGE OF MAGDALENA.**

**EQUAL OPPORTUNITY EMPLOYMENT:** All qualified Bidders will receive consideration of contract(s) without regard to race, color, religion, sex or national origin.

Invitation for Bid packages will be available online at [www.villageofmagdalena.com/procurement.html](http://www.villageofmagdalena.com/procurement.html). For questions regarding this bid please contact the Village of Magdalena Chief Procurement Officer, Stephanie Finch via email at [clerk@villageofmagdalena.com](mailto:clerk@villageofmagdalena.com) or by phone 575-854-2261.

## I. INTRODUCTION

### ***A. Purpose of this Invitation to Bid***

The Village of Magdalena (hereinafter the “Village”), seeks sealed bids from qualified companies, properly registered and licensed, to provide street repair services.

### ***B. Summary Scope of Work***

Sweep and clean out and square up holes, spray tack oil, fill hole with hot mix, and compact; crack seal’ and fog all paved streets south of US 60 for a total of 1.7 miles.

### ***C. Scope of Procurement***

This is an Invitation to Bid being conducted by the Village of Magdalena. The scope of the procurement consists of identifying one or more companies that can provide the services described herein. This procurement will result in the award of one definite quantity contract.

### ***D. Procurement Manager***

The Village of Magdalena has designated a Procurement Officer who is responsible for this procurement and whose name, address, and telephone number are listed below. Any inquiries or requests regarding this procurement shall be submitted to the Chief Procurement Officer in writing. Bidders may contact ONLY the Chief Procurement Officer regarding the procurement. Other Village employees do not have the authority to respond on behalf of the Village of Magdalena:

Stephanie Finch  
Chief Procurement Officer

<b>Delivery Address:</b>	<b>Mailing Address:</b>
108 N. Main St., Magdalena, NM 87825	P.O. Box 145, Magdalena, NM 87825

Phone: 575.854.2261

Fax: 575.854.2273

E-mail: clerk@villageofmagdalena.com

NOTE: All deliveries via express carrier (INCLUDING BID DELIVERY) should be addressed to Stephanie Finch’s Delivery Address, above.

## ***E. Definition of Terminology***

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“Board of Trustees” (also “BT”) means the elected board in whom all powers of the Village are vested and who are responsible for the proper and efficient administration of Village government.

"Close of Business" means 5:00 P.M. Mountain Standard Time (MST) or Mountain Daylight Time (MDT), whichever is in effect on the date specified.

"Contract" or “Agreement” means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Bidder who enters into a binding contract.

"Village" means the Village of Magdalena, State of New Mexico.

"Determination" means the written documentation of a decision of the procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” refers to the terms "may", "can", "should", "preferably" or "prefers" which identify a desirable or discretionary item or factor. (As opposed to a “mandatory” item or factor.)

"Finalist" is defined as a Bidder who meets all the mandatory specifications of this Invitation to Bid.

"Mandatory" refers to the terms "must", "shall", "will", "is required" or "are required" which identify a mandatory item or factor. (As opposed to a “desirable” item or factor.) Failure to meet a mandatory item or factor may result in the rejection of the Bidders bid.

"Local public body" means every political subdivision of the State of New Mexico and the agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities.

"Bidder" is any person, corporation, or partnership who chooses to submit a bid.

"Procurement Manager" or “PM” means the person or designee authorized by the Village to manage or administer a procurement.

"Procuring agency of the Village" means the department or other subdivision of the Village of Magdalena that is requesting the procurement of services or items of tangible personal property.

"Purchase Order" or "PO" means the document which directs a contractor to deliver items of tangible personal property or services pursuant to an existing, valid contract.

"Purchasing" means the Village of Magdalena Purchasing Office or the Village of Magdalena Purchasing Agent.

"Purchasing Agent" or "PA" means the Purchasing Agent for the Village of Magdalena.

"Responsible Bidder" means a Bidder who submits a responsive bid and who has furnished required information and data to prove that their financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property called for in this bid.

"Responsive Bid" means a bid which conforms in all material respects to the requirements set forth in the invitation to bid. Material respects of a request for bids include, but are not limited to, price, quality, quantity and delivery requirements.

"Statement of Compliance" and "Statement of Concurrence" mean an express statement, by the Bidder in their bid, that they agree with and agree to the stated requirement(s). Possible examples of acceptable responses include "The [NAME HERE Company] agrees to comply with this requirement." and "The [NAME HERE Company] concurs with this requirement."

## ***F. Resident/Veteran Business Preference***

### **1. Resident Business Preference**

The New Mexico Procurement Code provides for preference for resident businesses and Contractors under certain conditions. If applicable, the preference will be provided to those Bidders that have provided a valid resident business preference certificate with their bid, as required by 13-1-22 NMSA 1978.

In order for a Bidder to receive preference as a resident business, that Bidder must submit a copy of their resident business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:  
<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>



## 2. Resident Veterans Preference

Effective July 1, 2012, certain preferences are available to Resident Veteran Businesses. [Please see Section V.C.4 for more information and especially note Appendix F.] In order for a Bidder to receive preference as a resident veteran business, that Bidder must submit a copy of their resident veteran business preference certificate with their bid. The preference certificate must have been issued by the New Mexico Taxation and Revenue Department. Providing only a preference number or a copy of the application is not acceptable.

For more information and application forms, go to:

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

## ***G. Procurement Library***

The Procurement Library consists of the following documents which may be accessed by their associated Internet links:

**- New Mexico Procurement Code**

<http://www.nmonesource.com/nmnxtadmin/NMPublic.aspx>

**- Village of Magdalena Procurement Policy: 2015-02**

<https://www.villageofmagdalena.com/procurement.html>

**- New Mexico Veterans/In-State Preference**

<http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx>

**- Village of Magdalena Bid Documents**

<https://www.villageofmagdalena.com/procurement.html>

**- New Mexico Department of Transportation: 2014 Edition of the Standard Specifications for Highway & Bridge Construction**

<http://dot.state.nm.us/content/nmdot/en/Standards.html>

**- New Mexico Department of Transportation: Prequalification Packet**

<http://dot.state.nm.us/content/nmdot/en/prequalification.html>

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the ITB contains the schedule for the procurement, describes the major procurement events and contains the general requirements governing the procurement.

### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

ACTION	RESPONSIBILITY	DATE
1. Issue ITB	Procurement Manager (PM)	07/30/2017
2. Return of "Acknowledgment of Receipt" Form for Distribution List	PM, Potential Bidders (PB)	08/09/2017
3. Pre-Bid Conference	PM, PB	08/15/2017 @ 10:00 AM
4. Deadline to Submit Additional Questions	PB	08/18/2017
5. Response to Written Questions/ Amendments	PM	08/22/2017
<b>6. Submission of Sealed Bids</b>	<b>Bidders</b>	<b>09/13/2017 @ 11:00 AM</b>
7. Public Opening	Purchasing, Bidders, General Public	09/13/2017 @ 11:00 AM
8. Bid Tabulation	Purchasing	09/15/2017
9. Contract Award	Purchasing Officer, BCC	09/25/2017
10. Protest Deadline	Bidders	10/10/2017

\*Contract award is subject to approval of the Board of Trustees.

### B. EXPLANATION OF EVENTS

The following paragraphs further detail the activities listed in the sequence of events shown in Section II, Paragraph A.

#### 1. Issue ITB

This ITB is being issued by the Procurement Manager on behalf of the Village of Magdalena and the Village of Magdalena Board of Trustees. The bid can be accessed online at [www.villageofmagdalena.com](http://www.villageofmagdalena.com).

#### 2. Return of "Acknowledgment of Receipt" Form for Distribution List

**Potential Bidders should hand deliver or return by facsimile or e-mail or registered or certified mail the "Acknowledgement of Receipt" form** that accompanies this document (See Appendix A) to have their organization placed on the procurement distribution list. The form should be signed by an authorized

representative of the organization, dated and returned by the close of business on the date indicated in Section II.A (Sequence of Events), above.

The procurement distribution list will be used to notify those that submitted the form of any written responses to questions and any ITB amendments. Failure to return this form shall constitute a presumption of receipt and rejection of the ITB, and the potential Bidder's organization name shall not appear on the distribution list.

### 3. Pre-Bid Conference

A Pre-Bid Conference will be held on the date indicated in Section II.A (Sequence of Events) at Village Hall, 108 N. Main St., Magdalena, NM.

### 4. Deadline to submit additional written questions

Potential Bidders may submit additional written questions as to the intent or clarity of this ITB until close of business on the date indicated in Section II.A (Sequence of Events), above. All written questions must be sent by e-mail to the Procurement Manager (See Section I, Paragraph D.)

### 5. Response to written questions/ITB Amendments

Written responses to written questions and any ITB amendments will be posted to the Village of Magdalena website at [www.villageofmagdalena.com](http://www.villageofmagdalena.com). Notification of such posting shall be provided to all potential Bidders that have returned the "Acknowledgement of Receipt" Form found at Appendix A. A new "Acknowledgement of Receipt" Form will accompany the posted distribution package. The form should be signed by the Bidder's representative, dated, and hand-delivered or returned by facsimile or e-mail or by registered or certified mail by the date indicated thereon. **Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process.**

### 6. Submission of Bids

**BIDS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 11:00 AM MDT ON THE DATE INDICATED IN SECTION II.A (SEQUENCE OF EVENTS), ABOVE. BIDS RECEIVED AFTER THIS DEADLINE FOR ANY REASON WILL NOT BE ACCEPTED OR CONSIDERED.**

The date and time of receipt will be recorded on each bid. Bids must be addressed and delivered to the Procurement Manager at the delivery address listed in Section I, Paragraph D. Bids must be sealed and should be labeled on the outside of the package to clearly indicate that they are in response to the "Street Repair", should reference "ITB# 2017-01-101" and should indicate the deadline for receipt (due

date and time.) Bids submitted by facsimile or other electronic means **WILL NOT BE ACCEPTED.**

## **7. Public Opening**

All bids timely received will be opened and read aloud in a public forum at Village Hall, 108 N. Main St., Magdalena, New Mexico on the date and time indicated in Section II.A (Sequence of Events), per NMSA 1978, Section 13-1-107 (1984). Bidders are encouraged to attend.

At the bid opening, the amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the Purchasing Agent, together with the name of each bidder, will be recorded, and the record and each bid will be open to public inspection.

If you are an individual with a disability and you require accommodations such as a hearing interpreter to attend our Public Bid Opening, please contact the Procurement Manager (see Section I.D., above.) at least seven (7) days prior to the scheduled bid opening.

## **8. Bid Tabulation**

After the public opening, the bids will be assessed for responsiveness. Responsive bids will be tabulated (price compared) to identify the lowest price(s) submitted. During this time, the Procurement Manager may, at his or her option, initiate discussions with Bidders for the purpose of clarifying aspects of the bids, but bids may be accepted and considered without such discussion. Discussions SHALL NOT be initiated by the Bidders.

## **9. Contract Award**

The Purchasing Agent anticipates contract award on the date indicated in Section II.A (Sequence of Events), above. This date is subject to change at the discretion of the Purchasing Agent or the Board of Trustees.

## **10. Protest Deadline**

Any protest by a Bidder must be timely, in conformance with, and will be governed by Sections 13-1-172 through 13-1-176 NMSA 1978 and Village of Magdalena Procurement Policy #2015-02, Section 25. The fifteen (15) day protest period for timely Bidders shall begin on the day following contract award and will end at 5:00 PM MDT on the date indicated in Section 25.1 (Right to Protest), above. Protests must be written and must include the name and address of the protestor and the Invitation to Bid number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify

the ruling requested from the Purchasing Agent. The protest must be delivered to the Purchasing Agent.

Village of Magdalena Purchasing  
Attn. Stephanie Finch, Village Purchasing Agent  
108 N. Main Street  
P.O. Box 145  
Magdalena, New Mexico 87825

NOTE: Protests received after the deadline will not be accepted.

### ***C. GENERAL REQUIREMENTS***

This procurement will be conducted in accordance with the New Mexico Procurement Code (13-1-28 NMSA 1978) and Village of Magdalena Procurement Policy #2015-02.

#### **1. Acceptance of Conditions Governing the Procurement**

Bidders must indicate their acceptance of the Conditions Governing the Procurement in the letter of transmittal form (see Appendix D). Submission of a bid constitutes acceptance of the Terms and Conditions contained herein.

#### **2. Incurring Cost**

Any cost incurred by the Bidder in preparation, transmittal, presentation of any bid or material or negotiation associated with their response to this ITB shall be borne solely by the bidder.

#### **3. Prime Contractor Responsibility**

Any contract that may result from this ITB shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Village. The Village will only make contract payments to the prime contractor.

#### **4. Subcontractors**

Use of subcontractors must be clearly explained in the bid and each must be identified by name using the List of Proposed Subcontractors (Appendix H). The prime contractor shall be wholly responsible for contract performance whether or not subcontractors are used. Substitution of subcontractors, after contract award, must receive prior written approval of the Village Purchasing Office.

#### **5. Amended Bids**

A Bidder may submit an amended bid before the deadline for receipt of bids. Such amended bids must be complete replacements for a previously submitted bid

and must be clearly identified as such in the transmittal letter. Village personnel will not merge, collate, or assemble bid materials.

#### **6. Bidders' Rights to Withdraw Bid**

Bidders will be allowed to withdraw their bids at any time prior to the deadline for receipt of bids. The Bidder must submit a written withdrawal request signed by the Bidder's duly authorized representative addressed to the Procurement Manager. The approval or denial of withdrawal requests received after the deadline for receipt of the bids is governed by the applicable procurement regulations. A low Bidder alleging a material mistake of fact after bids have been opened may be permitted to withdraw the bid upon written request prior to award at the discretion of the Village.

#### **7. Bid Offer Firm**

Responses to this ITB, including bid prices, will be considered firm for ninety (90) days after the due date for receipt of bids. With the submission of the bid, bidders agree to the contract contained in this ITB.

#### **8. No Obligation**

This procurement in no manner obligates Village of Magdalena or any of its departments or other subdivisions to the eventual lease, purchase, etc., of any tangible personal property offered or services proposed until a valid written contract is approved by the Purchasing Agent and other required approval authorities and one or more valid Purchase Orders are issued.

#### **9. Termination**

This ITB may be canceled at any time and any and all bids may be rejected in whole or in part when the Village determines such action to be in the best interest of the Village.

#### **10. Sufficient Appropriation**

Any contract awarded as a result of this ITB process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The Village's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

#### **11. Legal Review**

The Village requires that all bidders agree to be bound by the General Requirements contained in this ITB. Any bidder's concerns must be promptly brought to the attention of the Procurement Manager.

## **12. Governing Law**

This procurement and any agreement with bidders that may result shall be governed by the laws of the State of New Mexico.

## **13. Basis for Bid**

Only information supplied by the Village in writing through the Procurement Manager or in this ITB should be used as the basis for the preparation of bids.

## **14. Contract Terms and Conditions**

The contract between the Village the contractor will follow the format specified by the Village and contain the terms and conditions set forth in Appendix I, Purchase Agreement.

## **15. Bidder Qualifications**

The Village may make such investigations as necessary to determine the ability of the Bidder to adhere to the requirements specified within this ITB. The Village will reject the bid of any Bidder who is not a responsible Bidder or fails to submit a responsive bid as defined in Sections 13-1-82 and 13-1-84 NMSA 1978.

Bidders must, upon request of the Village, provide information and data to prove that the financial resources, production or service facilities, service reputation and experience are adequate to make satisfactory delivery of the materials and/or services. The Village reserves the right to require a Bidder to furnish a Performance Bond prior to award, where the Bidder is unable to furnish the required information or data, or for other reasons which would insure proper performance by the Bidder.

## **16. Right to Waive Minor Irregularities**

The Village reserves the right to waive minor irregularities. The Village also reserves the right to waive mandatory requirement(s) provided that all of the otherwise responsive bids failed to meet the same mandatory requirement(s) or doing so does not otherwise materially affect the procurement.

## **17. Change in Contractor Representatives**

The Village reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the Village, meeting its needs adequately.

## **18. Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. The State of New Mexico criminal statutes also impose felony penalties for bribes, gratuities and kick-backs.

## **19. Village Rights**

The Village reserves the right to accept all or a portion of a Bidder's bid and to award to the Bidder whose bid is deemed to be in the best interest of the Village.

## **20. Ownership of Bids**

All documents submitted in response to the ITB shall become the property of the Village. However, any technical or user documentation submitted with the bids of non-selected Bidders may be returned after the expiration of the protest period, by request, at the expense of the Bidder.

## **21. Ambiguity, Inconsistency or Errors in ITB**

Bidders shall promptly notify the Procurement Manager, in writing, of any ambiguity, inconsistency or error which they discover upon examination of the ITB.

## **22. Competition**

By submitting a bid, Bidder certifies that they have not, either directly or indirectly, entered into any action in restraint of full competition in connection with the bid submitted to the Village.

## **23. Use by Other Government Entities**

Not applicable.

## **24. Confidentiality**

Any confidential information provided to, or developed by, the contractor in the performance of any Agreement resulting from this ITB shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Village of Magdalena.



## 25. Delivery & Failure to Meet Order Provisions

- a. No Delivery before Purchase Order is Issued: No Bidder, including a Bidder to whom an award is made, shall deliver any item of tangible personal property, commence services or start construction prior to the issuance of a Purchase Order or Notice to Proceed issued by the Village of Magdalena Purchasing Department.
- b. Failure to Meet Order Provisions: The Village reserves the right to cancel all or any part of an order without cost to the Village, if the Contractor fails to meet the provisions of that order and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the Village due to the Contractor's default.

## 26. Discounts

The Bid Form provides a space for the Bidder to identify prompt payment terms the Bidder is offering, if any. Prompt payment discounts will not be considered in computing the low bid. Discounts for payment within twenty (20) days will be considered after the award of the Contract. Discounted time will be computed from the date of receipt of the merchandise, invoice or billing for services, whichever is later.

## 27. Village Furnished Property

Village furnished property shall be returned to the Village upon request in the same condition as received except for ordinary wear, tear and modifications ordered hereunder.

## 28. Packing, Shipping, & Invoicing

- a. The Village's Purchasing Order number and the Contractor's name, user's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on all shipments not accompanied by a packing ticket.
- b. The Contractor's invoice shall be submitted and shall contain the following information: order number, description of supplies or services, quantities, unit price and extended totals. Separate invoices shall be rendered for each and every complete shipment.
- c. Invoices must be submitted to the Village of Magdalena Accounts Payable Office and NOT to the using agency.

## **29. Electronic mail address required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Bidder must have a valid e-mail address to receive this correspondence.

## **30. Use of Electronic Versions of this ITB**

This ITB is being made available by electronic means. If accepted by such means, the Bidder acknowledges and accepts full responsibility to ensure that no changes are made to the ITB. In the event of conflict between a version of the ITB in the Bidder's possession and the version maintained by the Village, the version maintained by the Village shall govern.

## **31. Award Rights**

The Village reserves the right to award this Invitation to Bid to the lowest overall cost (including option items) on an all or none basis.

## **32. Deliver**

All deliveries must be F.O.B. Destination – Freight Pre-Paid, unless otherwise indicated by the Procurement Officer.

## **33. Addenda**

Changes or amendments to specifications, conditions or provisions herein may be initiated ONLY through the Purchasing Department in the form of a written addendum. Any addenda shall become a part of this bid.

It is the responsibility of all persons or businesses considering submitting a bid in response to this solicitation to ensure that they have received all addenda prior to making a bid. Addenda will be posted to the Village website at [www.villageofmagdalena.com](http://www.villageofmagdalena.com) prior to the due date for the receipt of bids. All potential Bidders that have submitted the Acknowledgement of Receipt Form (at Appendix A) will be notified of the availability of such addenda.

## **34. Insurance**

The Contractor will be required to provide proof of, and maintain, insurance prior to performing work on Village owned property. The requirements are as follows:

1. General Liability: \$1,000,000.00 per occurrence \$2,000,000.00 Aggregate

- a. Includes Coverage for Premises/Operation Coverage & Products/Completed Operations
  - b. Must be Occurrence form coverage
  - c. Coverage shall remain in force for the duration of the contract.
2. Auto Liability: \$1,000,000.00 Each Accident
  - a. Covers all owned, leased, hired and non-owned autos or “any auto”
3. Professional Liability: Minimum \$1,000,000 aggregate
4. Workers Compensation:
  - a. When applicable by law, firm must provide the New Mexico statutory limits.
5. New Mexico Department of Transportation named as Additionally Insured:
  - a. This condition is required for all insurances requested except Professional Liability

### 35. Prequalification Rule

Prequalification of bidders is a condition for submitting a bid as authorized by the New Mexico Procurement Code, NMSA 1978, 13-1-82 and 13-1-134.

“Bidders shall be prequalified in accordance with the requirements of the Department’s prequalification regulations, 18.25.5 NMAC. The failure of a bidder to be prequalified shall render the bid non-responsive and the bid shall be rejected.”

Information on the Contractor Prequalification Rule can be found at:  
<http://dot.state.nm.us/content/nmdot/en/prequalification.html>

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### ***A. NUMBER OF RESPONSES***

Bidder's may submit only one (1) response to this ITB.

#### ***B. NUMBER OF COPIES***

Bidders shall deliver one (1) signed and sealed bid to the location specified in Section I.D. on or before the closing date and time for receipt of bids.

#### ***C. BID CONTENTS***

All bids **MUST** contain the following four (5) items (*failure to do so may result in your bid being deemed non-responsive*):

1. **COMPLETED AND SIGNED** Letter of Transmittal Form (Appendix D)
2. **COMPLETED AND SIGNED** Bid Form (Appendix C)
3. **COMPLETED AND SIGNED** Campaign Disclosure Form (Appendix E)
4. **COMPLETED AND SIGNED** Resident Veterans Preference Certification Form (Appendix F)
5. **COMPLETED AND SIGNED** Purchase Agreement Contract (Appendix I)

Some bids **MUST** contain the following items, if required in Section IV, SPECIFICATIONS AND REQUIREMENTS:

6. 5% Bid bond in proper format
7. Licenses/certifications of compliance forms
8. Certificate of Insurance  
New Mexico DOT named as Additional Insured
9. Subcontractor Listing (Appendix H)
10. **COMPLETED AND SIGNED** Statement of Concurrence for Bid Specifications (Appendix B)
11. **COMPLETED AND SIGNED** Statement of Concurrence for Delivery/Construction completion

12. **COMPLETED AND SIGNED** Statement of Concurrence for Construction Materials & Specifications

13. **COMPLETED AND SIGNED** Statement of Concurrence for Wage Determination

Bids **MAY** contain the following **OPTIONAL** items:

14. Resident Business Preference State of New Mexico Certificate (See Section I.F.1.)

15. Resident Veterans Preference State of New Mexico Certificate (See Section I.F.2.)

Failure of Bidder to complete & submit required bidding documents, in accordance with all instruction provided, is cause for rejection of their bid (A Bid Submittal Checklist is provided at Appendix G to assist Bidders in insuring they are submitting a complete and proper bid).

#### ***D. BID FORMAT***

1. To preclude any possible errors or misrepresentations, bid prices must be affixed legibly in ink or typewritten. Corrections or changes must be signed or initialed by Bidder prior to the scheduled bid opening. Failure to comply will be just cause for rejection of the bid.
2. The unit price(s) shall exclude all state and local taxes.

#### ***E. BID SUBMITTAL REQUIREMENTS***

Bids must be submitted in a sealed envelope. The bid title, the bid number and the opening date and time should be clearly indicated on the bottom left hand side of the front of the envelope. The Bidder's name shall also appear on the envelope. Failure to properly label the bid envelope may necessitate the premature opening of the bid in order to identify the bid number.

## **IV. SPECIFICATIONS AND REQUIREMENTS**

This section details the minimum requirements and specifications for products or services sought by the Village. It also provides information on the Village's use and intent in providing the specifications, as well as instructions for potential Bidders that may not feel the specifications are fair, achievable or are otherwise unacceptable.

### ***A. INFORMATION***

#### **1. Restrictive Specifications**

Specifications stated in this request are not intended to exclude any Bidder. If any Bidder is of the opinion that the specifications as written preclude them from submitting a proposal on this bid, it is requested that their opinion be made known to the Chief Procurement Officer, in writing, at least seven (7) days prior to the bid opening date.

#### **2. Use of Brand Names and Numbers**

Brand names and numbers are for reference only; equivalents will be considered. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. "No substitute" specifications may be authorized ONLY if required to match existing equipment.

#### **3. Equivalent Items Bid**

If the Bidder offers an item other than the one specified, which the Bidder considers comparable, the manufacturer's name and model number of that item must be specified in the bid and sufficient performance specifications and descriptive data provided to permit a thorough evaluation. Failure to provide the appropriate information may result in disqualification of the bid.

#### **4. Special Conditions**

Attention is particularly called to those parts of the Contract Documents and Specifications which deal with the following:

- a. Specifications & requirements;
- b. Inspections & testing;
- c. Insurance requirements; and
- d. Wage rates.

#### **5. Response to Requirements**

Each mandatory requirement in Sections IV.B.1 through IV.C, below, requires a vendor response, as indicated. Failure to respond to, or properly comply with, a mandatory requirement may result in the disqualification of the bidder's bid.

## ***B. MANDATORY REQUIREMENTS***

### **1. Letter of Transmittal Form**

Bidder must complete and submit the “Letter of Transmittal Form”, found at Appendix D, with their bid. The form must be signed and dated by an individual authorized to contractually bind the firm.

### **2. Bid Form**

Bidder must complete and submit the “Bid Form”, found at Appendix C, with their bid. The form must be signed and dated by an individual authorized to contractually bind the firm.

### **3. Campaign Contribution Disclosure Form**

Offeror must complete and sign the Appendix E, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. Note that there are two (2) different signature sections within the form. (For purposes of this requirement, the applicable elected public officials within the Village of Magdalena are: Mayor Richard Rumpf, Mayor Pro-Tem/Trustee Joseph T. Scartaccini; Trustee Lynda Middleton; Trustee Donna Dawson; Trustee Jose Castanon and Municipal Judge Kayla Scartaccini.

### **4. Resident Veterans Preference Certification Form**

Bidder must complete and submit the “Resident Veterans Preference Certification Form” (Appendix F) with their bid. The form must be signed and dated by an individual authorized to contractually bind the firm.

### **5. Purchase Agreement Contract**

Contract (Appendix I) must be signed and dated by an individual authorized to contractually bind the firm.

### **6. Bid Bond**

Each bid shall be accompanied by a certified check or bid bond acceptable to the Village of Magdalena in the amount equal to at least five percent (5%) of the Bid, payable without condition to the Village as guarantee that the Bidder, if awarded the Contract, will promptly execute the Agreement in accordance

with the Bid and the other Contract Documents and will furnish good and sufficient bond for the faithful performance of the same and for the payment to all persons supplying labor and material for the Work. The bid guarantees of all Bidders, except the three lowest, will be returned within three days after the opening of Bids, and the remaining cash, checks of bid bonds will be returned promptly after the Owner and the accepted Bidder have executed the Contract.

7. Permits & Licenses

Unless otherwise agreed upon on a per-project basis, the Contractor is responsible to obtain and pay for all permits and licenses required services performed under this contract. This requirement includes, but is not limited to, all permits and fees required by the using agency and any local state, federal, or other public or private entities' fees for permits and/or licenses. These costs should be factored into the bid total and invoiced as part of the project.

8. Certificate of Insurance

Contractor must have a general liability insurance policy with limits of liability of at least \$1,000,000 per occurrence. NM DOT is to be named as an additional insured on the contractor's policy and it shall state that the coverage provided under the policy is primary over any other valid insurance.

9. Subcontractor Listing

Use of subcontractors must be clearly explained in the bid and each must be identified by name see Appendix H. The prime contractor shall be wholly responsible for contract performance whether or not subcontractors are used. Substitution of subcontractors, after contract award, must receive prior written approval of the Village Purchasing Office.

10. Scope of Work

See Appendix B for the Scope of Work.

11. Delivery/Construction Completion

Construction will be completed and all invoices submitted to the Village of Magdalena by December 22, 2017, after this date the Village will lose appropriations designated to this project. **A statement of concurrence is required.**



## 12. Construction Materials

Construction will be performed in conformance to New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, current edition (see Procurement Library Section I.G.).

Where alternate specifications exist, the decision as to which specification to use will be up to the Procuring Agency. **A statement of concurrence is required.**

## 13. Wage Rate Determinations

Contractor must agree to abide by the Wage Rate Determination, if the project bid value is over \$60,000.00, obtained and provided by the Procuring Agency or its authorized agent prior to the start of any work. **A statement of concurrence is required.**

### ***C. OTHER REQUIREMENTS***

Bidder shall be required to submit any and all proposed/alternative bid terms and conditions with their bid submittal.

## **V. BID OPENING, PROCESSING AND AWARD**

This section describes how bids received are handled and assessed. It also describes how the award process works as well as the role of the Contract provided in Appendix I and the role of Purchase Orders that may follow Contract award.

### ***A. BID RECEIPT***

Bids shall be accepted unconditionally per NMSA 1978, Section 13-1-105 (2005). Only those bids received before the deadline for the receipt of bids will be considered. Bids received after the deadline (“late bids”) will be retained in the procurement file, unopened, and shall not be considered for award.

### ***B. BID OPENING***

Bids will be opened and read in public in accordance with Section 13-1-107 of the New Mexico Procurement Code. See Section II.B.7, above, for specific information.

### ***C. EVALUATION PROCESS***

#### **1. Compliance Review**

After the required public opening and reading, all timely received bids will be reviewed for compliance with the requirements and specifications stated within the ITB. Bids deemed non-responsive to any mandatory requirement or specification may be disqualified.

#### **2. Clarifications**

The Chief Procurement Officer may contact the Bidder for clarification of the response as specified in Section II.B.8.

#### **3. Other Information Sources**

The Village may use other sources of information to confirm the validity of bids submitted and the ability of the Bidder to perform as specified in Section II.C.15.

#### **4. Bid Tabulation**

The bid price(s) on the Bid Form from timely received and responsive bids will be tabulated (price compared) to identify the lowest price(s) bid. Each tier will be evaluated separately. If applicable, the price(s) bid will be adjusted (for

comparison and award purposes only) for those Bidders that have submitted a valid Preference Certificate with their bid.

5. Discrepancies in Price(s)

In case of an error in the Lump Sum Base Price, the written price shall govern.

6. Determination of Lowest Responsive Bid

After completion of the bid tabulation, the Village will examine the results to determine which Bidder offers the lowest responsive bid to the Village in accordance with the specifications and terms and conditions set forth in the Invitation for Bids.

7. Public Notification of Bid Tabulations and Contract Awards

Bid tabulations and awarded Contracts will be posted to the Village of Magdalena website within approximately two (2) weeks after the bid opening date. To access go to [www.villageofmagdalena.com](http://www.villageofmagdalena.com)

## ***D. AWARD AND ORDER PROCESS***

1. Contract Award

- a. Contracts awarded as a result of this solicitation shall be awarded to the responsible Bidder who's Base Bid and any accepted bid option represents the best value and is in the Village's best interest.
- b. Upon selection for possible Contract award, the Village will add the Contractor's name and signatory information to the signed Contract (Appendix I) submitted by the Bidder and it will be submitted to the Board of Trustees with a recommendation for award.\* Once approved and signed by the Board of Trustees the Contract is officially awarded.

\*Bidders may place their company name and signatory information in the highlighted areas of the signed Contract they submit, if desired.

2. Order(s)

A successful Bidder SHOULD NOT begin to deliver products or begin performance based solely on Contract award as detailed above. A successful Bidder may only deliver products or begin performance AFTER the receipt of an approved Purchase Order issued by the Village of Magdalena Purchasing Department. Failure to comply is AT THE

CONTRACTOR'S RISK and the Village shall not be liable to pay for any products delivered or services performed prior to the issuance of an approved Purchase Order.

## **APPENDIX A**

### ***ACKNOWLEDGEMENT OF RECEIPT FORM***

Street Repair  
ITB# 2017-01-101

An Acknowledgement of Receipt Form should be signed and submitted to the Procurement Officer (see contact information below). In acknowledgment of receipt of this Invitation for Bid, the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix I. Only Bidders who elect to return this completed form with the intention of submitting a bid, will receive copies of Village's written responses as well as ITB Addenda, if any are issued.

**BIDDER:** \_\_\_\_\_

**REPRESENTED BY:** \_\_\_\_\_

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

**PHONE NO:** \_\_\_\_\_ **FAX NO:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY, STATE, ZIP CODE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**The above name and address will be used for all correspondence related to the ITB. Bidder does / does not (CIRCLE ONE) intend to respond to this ITB.**

Please return to:

**Stephanie Finch**  
Procurement Officer  
108 N. Main Street  
P.O. Box 145  
Magdalena, NM 87825  
Phone: (575) 854-2261  
E-mail: [clerk@villageofmagdalena.com](mailto:clerk@villageofmagdalena.com)

## APPENDIX B

### *SCOPE OF WORK*

#### **ELM Street**

##### **1. Street Dimensions:**

**a.**

Length in Miles	Converted to Feet	Width in Feet	Square Feet	Square Yards
.5	2640	48	126,720	14,080

##### **2. What is Needed for this street:**

- a. Sweep & clean out potholes
- b. Spray tack oil
- c. Fill potholes with hot mix & compact
- d. Fog seal

#### **Spruce Street**

##### **1. Street Dimensions**

**a.**

Length in Miles	Converted to Feet	Width in Feet	Square Feet	Square Yards
.7	3696	24	88,704	9,856

##### **2. What is needed for this street:**

- a. Clean out cuts & potholes
- b. Fill potholes and cuts with hot mix & compact
- c. Spray tack oil
- d. Fog seal

#### **Pine Street**

##### **1. Street Dimensions**

**a.**

Length in Miles	Converted to Feet	Width in Feet	Square Feet	Square Yards
.5	2640	31	81,840	9,093

##### **2. What is needed for this street:**

- a. Crack seal
- b. Fog Seal

**REQUIRED: SCOPE OF WORK STATEMENT OF CONCURRENCE:**

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(Signature of Business Representative)

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(Date)

\*Must be an authorized signatory for the Business.

## APPENDIX C

### *BID FORM*

#### 2017-01-101: STREET REPAIR

Please offer your best price the Village of Magdalena Street Repair. The lump sum base bid for the services must include pricing for all materials, service, & delivery, if applicable. Be advised that award may be made without discussion with Bidders on bids received.

**BASE BID: Elm Street, Magdalena, NM**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: Base) (Figures)

**NMGRT (Village of Magdalena @ 6.9375%):**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: NMGRT) (Figures)

**TOTAL (BASE BID + NMGRT):**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: Total) (Figures)

**BASE BID: Spruce Street, Magdalena, NM**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: Base) (Figures)

**NMGRT (Village of Magdalena @ 6.9375%):**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: NMGRT) (Figures)

**TOTAL (BASE BID + NMGRT):**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: Total) (Figures)



**BASE BID: Pine Street, Magdalena, NM**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: Base) (Figures)

**NMGRT (Village of Magdalena @ 6.9375%):**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: NMGRT) (Figures)

**TOTAL (BASE BID + NMGRT):**

\_\_\_\_\_ (\$ \_\_\_\_\_)  
(Written Amount: Total) (Figures)

Each tier will be evaluated separately and awarded based on the need, budget, and preference of the Village of Magdalena.

**Payment terms (OPTIONAL):** Bidder offers a \_\_\_\_\_% discount for payments made within \_\_\_\_\_ days of acceptance of the goods or services shown on a correct and valid invoice. Terms of less than twenty (20) days will not be considered.

Please check your calculations before submitting your bid; the Agency will not be responsible for Bidder miscalculations.

Signature below verifies that Bidder has read, understands, and agrees to the terms and conditions of this solicitation, attachments, and addenda.

Bidder hereby acknowledges receipt of Addenda

Number \_\_\_\_\_, Dated \_\_\_\_\_

Number \_\_\_\_\_, Dated \_\_\_\_\_

Number \_\_\_\_\_, Dated \_\_\_\_\_

The representations herein are made under penalty of perjury. We hereby offer to sell the Agency the above product(s) or services at the prices shown and under the terms and conditions herein, attached, or incorporated by referenced.

\_\_\_\_\_  
Bidder Name

\_\_\_\_\_  
Signature of Authorize Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

## APPENDIX D

### ***LETTER OF TRANSMITTAL FORM***

Items #1 to 4 **MUST EACH BE RESPONDED TO.** Failure to respond to all four items **WILL RESULT IN THE DISQUALIFICATION OF THE BID!**

1. Identity (Name) and Mailing Address of the submitting organization:

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2. For the person submitting the bid:

Name	
Title	
E-Mail Address	
Telephone Number	

3. Bidder must identify any employee(s) or elected official(s) of Village of Magdalena that have a financial interest in the Bidder (one of the two **must** be selected):

Interest\*                      \_\_\_\_\_ No Financial Interest                      \_\_\_\_\_ Yes, Financial

\*Specify by name(s): \_\_\_\_\_

4. Declarations:

- I certify that I am authorized to contractually bind my company.
- On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II, Paragraph C.1. and agree to the Terms and Conditions of the Contract provided in Appendix G.
- I acknowledge receipt of any and all amendments to this ITB.
- I certify that my company/entity/organization commits to comply and act in accordance with (1) Federal Executive Orders and New Mexico State Statutes relating to the enforcement of civil rights, (2) Federal Code 5 USCA 7201 et. seq., Anti-Discrimination in Employment; (3) Executive Order No. 11246, Equal Opportunity in Federal Employment; (4) Title 6, Civil Rights Act of 1964; and (5) Requirements of the American with Disabilities Act of 1990 for work performed as a result of this ITB.

\_\_\_\_\_, 2016

Authorized Signature and Date (**Must be signed by the person identified in item #2, above.**)

## APPENDIX E

### ***CAMPAIGN CONTRIBUTION DISCLOSURE FORM***

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**"Applicable public official"** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**"Campaign Contribution"** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office.

"Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or

all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

**"Pendency of the procurement process"** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**"Person"** means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**"Prospective contractor"** means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

**"Representative of a prospective contractor"** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: \_\_\_\_\_

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s)  
(Attach extra pages if necessary) \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

**-OR-**

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

## APPENDIX F

### ***RESIDENT VETERANS PREFERENCE CERTIFICATION***

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

**Please check one box only**

- ☐ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- ☐ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- ☐ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory for the Business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaward of the procurement involved if the statements are proven to be incorrect.

## APPENDIX G

### ***BID SUBMITTAL CHECKLIST***

ITB #2017-01-101  
STREET REPAIR

This checklist is provided as a courtesy to assist Bidders in insuring they submit a properly completed bid. **It should NOT be returned with the bid.** It is for information purposes only. This checklist is not guaranteed to be all inclusive. Bidders should carefully review the requirements of the ITB and their response before submitting their bid to the Village.

ITEM	REFERENCE	YES	NO
Correct delivery address for bid?	I.D.		
Received all Addenda for bid?	II.C.33.		
Prequalified with NMDOT?	II.C.35		
Preference certificate included? (If bidder is qualified and desires preference eligibility for State and/or Local)	I.F. and III.C		
Letter of Transmittal Form complete, <b>SIGNED</b> and included?	II.C.2, IV.B.1. and Appendix D		
Bid Form complete, <b>SIGNED</b> and included?	III.C.2., IV.B.2., and Appendix C		
Campaign Contribution Disclosure Form complete, <b>SIGNED</b> and included?	III.C.3., IV.B.3., and Appendix E		
Resident Veterans Preference Certification Form complete, <b>SIGNED</b> and included?	I.F.2., I.G., III.C.4., III.C.7., and Appendix F		
Invitation to Bid Purchase Agreement, <b>SIGNED</b> and included	Appendix I		
5% Bid Bond	III.C.6 & IV.B.6		
Licenses & Certifications of Compliance	III.C.7 & IV.B.7		
Certificate of Insurance With NMDOT named as Additional Insured	III.C.8 & IV.B.8		
Subcontractor Listing	III.C.9, IV.B.9 & Appendix H		
Statement of Concurrence: Scope of Work	Appendix B		
Statement of Concurrence: Delivery/Construction Completion	III.C.11 & IV.B.11		
Statement of Concurrence: Materials & Specifications	III.C.12 & IV.B.12		
Statement of Concurrence: Wage Determination	III.C.13 & IV.B.13		
Is the bid sealed and clearly marked?	II.B.6. and III.E.		



## APPENDIX H

### ***LIST OF PROPOSED SUBCONTRACTORS***

In accordance with Public Works § 13-4-34 NMSA 1978, General Contractor Bidders shall list all proposed subcontractors over the listing threshold of **\$5,000**. If none of the work will be subcontracted, Bidder may write “NONE” and include the sheet with their bid.

Prior to award of the contract, the Contractor may be required to provide additional information regarding their proposed Subcontractors.

In accordance with Public Works § 13-4-13.1 NMSA 1978, Public Works Contracts, Registration of Contractors and Subcontractors: Contractors submitting bid pricing more than \$60,000 shall be registered with the New Mexico Department of Workforce Solutions prior to submitting a bid to the Village of Magdalena. If a Contractor is not registered at the time of Bid opening, their Bid shall be considered non-responsive and will be rejected. Contractor’s subcontractors shall also be registered. If a Contractor’s Bid includes any subcontractor that is not registered, their Bid may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978. Bidders may find additional information on the registration requirements and forms at the following website:

<http://www.dws.state.nm.us/LaborRelations/LaborInformation/PublicWorks>

Subcontractor Name & License #	Address	Category of Work	Amount	NMDWS Registration #
			\$	
			\$	
			\$	
			\$	
			\$	

Use additional sheets if necessary

In accordance with Public Works § 13-4-36 C & D NMSA 1978, Substitution of Subcontractor:

- C. No contractor whose bid is accepted shall permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid without the consent of the using agency.
- D. No contractor whose bid is accepted, other than in the performance of change orders causing changes or deviations from the original contract, shall sublet or subcontract any portion of the work in excess of the listing threshold as to which his original bid did not designate a subcontractor unless:
  - 1) the contractor fails to receive a bid from a category of work. Under such circumstances, the contractor may subcontract. The contractor shall designate on the listing form that no bid was received or;
  - 2) the contractor fails to receive more than one bid for a category of work. Under such circumstances, the contractor may subcontract. The contractor shall state on the listing form that only one subcontractor's bid was received, together with the name of the subcontractor. This designation shall not occur more than one time on the subcontractor list.

In accordance with Public Works § 13-4-37 A NMSA 1978, it is the responsibility of each subcontractor submitting a bid to a contractor to be prepared to submit a faithful performance and payment bond if so requested by the contractor.

In accordance with Procurement § 13-1-148.1 NMSA 1978, a subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

## **APPENDIX I**

### ***PURCHASE AGREEMENT CONTRACT***

#### **VILLAGE OF MAGDALENA**

THIS AGREEMENT is made and entered into by and between the Board of Trustees of Village of Magdalena, State of New Mexico, hereinafter referred to as the "Village" and \_\_\_\_\_, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent, the Village of Magdalena Manager and the Board of Trustees.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall deliver products or perform the work outlined on the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference. Product(s) shall be delivered or work performed only upon receipt of a valid Purchase Order issued by the Village that specifically identifies the products or services to be provided by the Contractor.

**2. Compensation.**

A. The Village shall pay to the Contractor in full payment for product(s) accepted or services satisfactorily performed based on the price(s) found in the Bid Form at **Attachment 1**.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below. All invoices MUST BE received by the Village no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. The Contractor shall submit an accurate invoice for each purchase. Any reimbursement of taxes due to the Contractor shall be shown as a separate item. Invoices shall refer to the Purchase Order Number and shall be itemized unless otherwise specified by the Village. Invoices are to be mailed to: Village of Magdalena Accounts Payable, P.O. Box I, Magdalena, NM 87801

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

**3. Term.**

This Agreement shall terminate upon acceptance by the Village and payment for the specified product(s) or services, or in one (1) year, whichever comes first.

**4. Termination.**

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Village's sole liability upon such termination shall be to pay for product(s) delivered and accepted or work performed prior to the Contractor's receipt of the notice of termination, if the Village is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for product(s) delivered or such work performed within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Village or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE VILLAGE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the Village or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Village; 2) comply with all directives issued by the Village in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Village shall direct for the protection, preservation, retention or transfer of all property titled to the Village and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with Contract funds shall become property of the Village upon termination and shall be submitted to the Village as soon as practicable.

**5. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of Trustees for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of Trustees, this Agreement shall terminate immediately upon written notice being given by the Village to the Contractor. The Village's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Village proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors providing product(s) or performing services for the Village and are not employees of the Village of Magdalena. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Village vehicles, or any other benefits afforded to employees of the Village of Magdalena as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the Village of Magdalena 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 Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Village. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Agreement.

**8. Subcontracting.**

Not applicable.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the Village, its officers and employees, and the Village of Magdalena from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Village.

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the Village of Magdalena and shall be delivered to the Village no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Village employee while such employee was or is employed by the Village and participating directly or indirectly in the Village's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the Village; (ii) the Contractor is not a member of the family of a public officer or employee of the Village; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the Village, a member of the family of a public officer or employee of the Village, or a business in which a public officer or employee of the Village or the family of a public officer or employee of the Village has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the Village within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the Village whose official act, while in Village employment, directly resulted in the Village's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Village.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Village relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Village if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Village and notwithstanding anything in the Agreement to the contrary, the Village may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

**14. Merger.**

This Agreement 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 this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**15. 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 illegal bribes, gratuities and kickbacks.

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal, state and Village laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, 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 Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Seventh Judicial District Court in Village of Magdalena. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Village.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of product(s) delivered or services rendered during the

Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Village, the Department of Finance and Administration and the State Auditor. The Village shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Village to recover excessive or illegal payments

**20. Disclaimer and Hold Harmless.**

Village of Magdalena shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold Village of Magdalena harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Village of Magdalena in connection with the performance by Contractor of Contractor's duties according to this Agreement.

**21. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Village of Magdalena from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Village of Magdalena and the New Mexico Association of Counties by certified mail.

**22. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority



to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**25. Lobbying.**

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any Village, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any Village, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**26. Non-Collusion.**

In signing this bid the Bidder certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Village.

**27. Survival.**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement

**28. Succession.**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

**29. Force Majeure.**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**30. Mediation.**

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days

of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

**31. Notice to Proceed.**

It is expressly understood that this Agreement is not binding upon the Village until it is executed by the Board of Trustees after voting on the Contract at a public meeting or unless it is executed by the Village of Magdalena Manager, if the amount of the Contract is \$10,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully executed copy of the Agreement and one or more valid Purchase Orders issued by the Village.

**32. Attorney's Fees.**

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

**33. Cooperation.**

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

**34. Incorporation and Order of Precedence.**

This Invitation for Bids and the Contractor's Bid Form are incorporated by reference into this Agreement and are made a part of this Agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any Contract amendment(s), in reverse chronological order; then
2. this Contract itself; then
3. the Invitation for Bids; then
4. the Contractor's Bid Form; then
5. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the Contractor's bid).

**35. Patent, Copyright, Trademark and Trade Secret Indemnification.**

A. The Contractor shall defend, at its own expense, the Village of Magdalena against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the Village of Magdalena based upon the Contractor's trade secret infringement relating to any product or service provided under this Agreement, the Contractor agrees to reimburse the Village of Magdalena for all costs,

attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Village of Magdalena shall:

- i. give the Contractor prompt written notice of any claim;
  - ii. allow the Contractor to control the defense or settlement of the claim; and
  - iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
- i. provide a procuring agency of the Village the right to continue using the product or service;
  - ii. replace or modify the product or service so that it becomes non-infringing;
- or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the procuring agency of the Village to the extent such modification is the cause of the claim.

**36. Escalation Clause.**

Price escalation due to increased cost to the Contractor is not allowed.

**37. Warranties.**

Contractor warrants the materials, supplies or services furnished to be exactly as specified, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. Materials furnished by Contractor shall be accompanied by the manufacturer's written warranty against defects in quality, craftsmanship, and materials.

**38. Commercial Warranty.**

The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the Village and are in addition to and do not limit any rights afforded to the Village by any other clause of this Agreement. Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance.

**39. Insurance.**

The CONTRACTOR agrees to obtain and maintain, at the CONTRACTOR's expense, such insurance as will protect the CONTRACTOR from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the VILLAGE and the CONTRACTOR from all claims for bodily injury, death, or property damage which may arise from the performance by the CONTRACTOR, or by the CONTRACTOR's employees, for the CONTRACTOR's functions and services required under this Agreement. Such insurance shall be in an amount not less than **\$1,000,000.00** for injury to any one person and **\$1,000,000.00** on account of any one accident and in the amount of not less than **\$1,000,000.00** for property damage. The CONTRACTOR further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than **\$2,000,000.00** per claim and in the aggregate. Prior to commencement of any work, the CONTRACTOR shall furnish to the VILLAGE a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the VILLAGE. CONTRACTOR shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

**40. Inspection.**

Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Contractor's risk and expense, promptly after notice of rejection.

**41. Inspection of Plant.**

The Village may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this Contract.

**42. Late Payment Charges.**

Except as otherwise agreed to: late payment charges may be assessed against the user agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

**43. Overcharge Resulting from Antitrust Violations.**

Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the Village as to goods, services, and materials purchased in connection with this bid are hereby assigned to the Village.

**44. Succession.**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

**45. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Village:       Stephanie Finch, Village of Magdalena Procurement Officer  
                              PO Box 145  
                              Magdalena, NM 87825

To the Contractor:   \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature of all parties.**

**CONTRACTOR**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

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

Address: \_\_\_\_\_

**VILLAGE OF MAGDALENA**

**APPROVED, ADOPTED, AND PASSED** on this \_\_\_\_ day of \_\_\_\_\_, 2016.

**BOARD OF TRUSTEES OF THE VILLAGE OF MAGDALENA**

\_\_\_\_\_  
JOSEPH TYLER SCARTACCINI, TRUSTEE

\_\_\_\_\_  
LYNDA MIDDLETON

\_\_\_\_\_  
DONNA DAWSON, TRUSTEE

\_\_\_\_\_  
JOSE CASTANON, TRUSTEE

\_\_\_\_\_  
RICHARD RUMPF, MAYOR

ATTEST BY:

\_\_\_\_\_  
STEPHANIE FINCH, VILLAGE CLERK

## Attachment 1

### Scope of Work

The CONTRACTOR shall deliver products and services to a Procuring Agency which issues a valid Purchase Order at prices not to exceed those shown in the Contractor's Bid Form (ITB 2017-01-101 Appendix C). Procuring Agencies reserve the right to negotiate lower pricing upon mutual agreement of the parties.

#### **ELM Street**

##### **3. Street Dimensions:**

###### **a.**

Length in Miles	Converted to Feet	Width in Feet	Square Feet	Square Yards
.5	2640	48	126,720	14,080

##### **4. What is Needed for this street:**

- a. Sweep & clean out potholes
- b. Spray tack oil
- c. Fill potholes with hot mix & compact
- d. Fog seal

#### **Spruce Street**

##### **3. Street Dimensions**

###### **a.**

Length in Miles	Converted to Feet	Width in Feet	Square Feet	Square Yards
.7	3696	24	88,704	9,856

##### **4. What is needed for this street:**

- a. Clean out cuts & potholes
- b. Fill potholes and cuts with hot mix & compact
- c. Spray tack oil
- d. Fog seal

#### **Pine Street**

##### **3. Street Dimensions**

###### **a.**

Length in Miles	Converted to Feet	Width in Feet	Square Feet	Square Yards
.5	2640	31	81,840	9,093

##### **4. What is needed for this street:**

- a. Crack seal
- b. Fog Seal