VILLAGE OF MAGDALENA
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AGENDA
NOTICE OF REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES
MONDAY, JUNE 25, 2018
VILLAGE HALL 108 N. MAIN STREET 6:00 PM

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE OF ALLEGIANCE**
4. **APPROVAL OF AGENDA**
5. **APPROVAL OF MINUTES**
    a. **REGULAR MEETING – JUNE 11, 2018**
    b. **SPECIAL MEETING – JUNE 18, 2018**
6. **APPROVAL OF CASH BALANCE REPORT**
7. **APPROVAL OF BILLS**
8. **MAYOR'S REPORT**
9. **CLERK'S REPORT**
10. **CUATRO BURSUM – FIRST STATE BANK**
11. **DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION NO. 2018-06, DESIGNATING A BANK TO RECEIVE MUNICIPAL FUNDS**
12. **KAYLA SCARTACCINI – DISCUSSION & POSSIBLE DECISION REGARDING A COMMUNITY PARK IN MAGDALENA**
13. **DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION NO. 2018-07, A RESOLUTION PROVIDING FOR THE FAIR AND EFFICIENT MANNER OF PURCHASING TANGIBLE PERSONAL PROPERTY AND SERVICES IN THE VILLAGE OF MAGDALENA; ESTABLISHING AN EFFECTIVE DATE AND PENALTIES.**

14. DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF LODGER'S TAX

15. PUBLIC INPUT – 1 TOPIC PER PERSON – 3 MINUTE LIMIT

16. ADJOURNMENT

NOTE: THIS AGENDA IS SUBJECT TO REVISION UP TO 72 HOURS PRIOR TO THE SCHEDULED MEETING DATE AND TIME (NMSA 10-15-1 F). A COPY OF THE AGENDA MAY BE PICKED UP AT THE VILLAGE OFFICE, 108 N. MAIN STREET, MAGDALENA, NM 8725. IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AID OR SERVICE TO ATTEND OR PARTICIPATE IN THE MEETING, PLEASE CONTACT THE VILLAGE CLERK AT 575-854-2261 AT LEAST ONE WEEK PRIOR TO THE MEETING OR AS SOON AS POSSIBLE.

Minutes of the Regular Meeting of the Village of Magdalena
Board of Trustees
Held Monday, June 11, 2018 at 6:00 p.m.

DRAFT

Mayor Richard Rumpf called the meeting to order at 6:00 p.m.

Present: Mayor Richard Rumpf, James Nelson, Lynda Middleton, Donna Dawson, Clark Brown, Stephanie Finch - Clerk/Treasurer, Attorney Kathy Riley

Absent: Donna Dawson

Guests: Michael Zamora, Jake Finch, Alejandra Paez, Arianna Paez, John Larson, Kayla Scartaccini, Sarita Johnson, Mike Danielsen, Ann Danielsen, Carleen Gomez - Deputy Clerk

Mayor Richard Rumpf requested that Utilities Director Jake Finch lead the gallery in reciting the Pledge of Allegiance.

Approval of Agenda: Mrs. Middleton motioned to approve the agenda as presented, seconded by Mr. Brown. The motion carried unanimously.

Approval of Minutes: Mrs. Middleton motioned to approve the minutes of the Regular Meeting held on May 31, 2018, as presented, seconded by Mr. Nelson. The motion carried unanimously.

Approval of Cash Balance Report: Mrs. Middleton motioned to approve the cash balance report, as presented, seconded by Mr. Brown. The motion carried unanimously.

Approval of Bills: Mr. Nelson motioned to approve the bills, as presented, seconded by Mrs. Middleton. Mr. Brown abstained. The motion carried unanimously.

Airgas	$344.58	Consultant Pharmacist	$430.00
Eagle Wholesale	194.73	Gall's	26.99
Merchant's Automotive	384.09	Nance, Pato & Stout	638.25
Napa Auto Parts	137.06	NM Fire	1,500.00
NM Rural Water	1,500.00	NM Water & Waste Water	780.00
NMED Utility Operator	150.00	NMWWA W Central Section	240.00
NTS Communications	56.53	Quill	387.11

Rak's Building Supply	18.14	Route 60 Trading Post	100.00
SMA Enterprises, Inc.	405.10	Sierra Propane	65.51
Socorro County Manager	270.00	Socorro Insurance Mart	50.00
Verizon Wireless	799.02	Village of Magdalena	30.00
Williams Windmill	562.00	WNM Communications	1,180.38
A-1 Quality Redi Mix	507.76	OverDrive	1,500.00
Pitney Bowes	214.86	Toby Doors Inc	1,850.00
Troy Mechanical	91.32	USA BlueBook	894.58
Wex Bank	2,170.54		

Mayor's Report
Mayor Rumpf stated that the Wells Fargo Magdalena Branch would be closing in September. Mrs. Middleton stated that the bank claims that there is not enough traffic at this branch to justify keeping it open. Mrs. Middleton suggested that the Village write a letter outlining the hardship that this will cause as well as the affects it will have on businesses. Mayor Rumpf stated that Ms. Donna Dawson was in the hospital.

Clerk's Report
Clerk Finch stated that she will be meeting with Mr. Cuatro Bursum of First State Bank in Socorro. She stated that the Village deposits over $1M per year in the bank and $7,000.00 cash monthly, on average. She stated that one option is to have a vault in Magdalena to deposit cash, but the Village will have to pay for a courier and that vault. She stated that First State Bank has a branch in Reserve.

Clerk Finch stated that Mr. Abiel Carrillo with KSA Engineering expressed his apologies for not being able to attend the meeting but emailed an update. Clerk Finch read Mr. Carrillo's email, and, in his email, he stated that the loan for the radio read meters had been closed on. He stated that he would be getting bid documents in and then the Village would be able to advertise and go out to bid. He stated that prior to advertising he will prepare the pre-bid estimate and review the process with Clerk Finch. Clerk Finch stated that construction should begin in July and end in September which is on schedule.

Department Reports
EMS
Mr. Jim Nelson stated that there were three EMS calls in the month of May.

FIRE
Fire Captain Richard Rumpf stated that there were no fire calls in the month of May.

MARSHAL
A report was submitted by Marshal Michael Zamora and reviewed by the Board. Marshal Zamora stated that it had been fairly quiet. He stated that there were some criminal investigations going on. He added that the department is keeping an eye on the highway. Marshal Zamora reported that Deputy John Brannan would be attending the Law Enforcement Academy in July. He stated that he would like to see another Deputy hired. Mr. Zamora stated that there was one dog nuisance that he picked up.

JUDGE
Municipal Judge Kayla Scartaccini reported that there was one case of dogs running at large in the month of May. Judge Scartaccini stated that the defendant was ordered to pay the victim $500.00 in veterinarian fees and a $29.00 court fee.

PUBLIC WORKS
Utilities Director Jake Finch reported that the chip sealing of the streets would begin soon, hopefully within the coming month. Mrs. Middleton suggested that he convey to the residents when this is going to be happening so that they would be prepared for it.

LIBRARY
A report was submitted by Librarian Yvonne Magener and reviewed by the Board.

Public Hearing - Restricting The Sale & Use Of Fireworks Within The Village Of Magdalena
Mayor Rumpf stated that due to the extreme fire danger in the State and in Magdalena the restrictions of the sale and use of fireworks within the Village of Magdalena needed to be implemented. He stated that the Village cannot ban the use and sale completely, but it can restrict the use and sale of certain aerial fireworks. Mayor Rumpf stated that this could change if there were substantial rains. Mrs. Middleton stated that the restrictions needed to be passed within twenty days of the July 4th holiday. Mr. Nelson suggested that the Marshal's department check the firework stands to make sure they are complying. Mayor Rumpf stated that the Village could not restrict the sale but the use of aerial fireworks. Marshal Zamora stated that he did not see how high the aerial fireworks could be.

Ms. Sarita Johnson asked what number should be called if someone is shooting off illegal fireworks. Mayor Rumpf stated that anyone should call 911. He added that the fire department will be out, and they will make their presence known.

Discussion & Possible Decision Regarding Approval Of Emergency Ordinance & Proclamation Restricting The Sale & Use Of Fireworks Within The Village Of Magdalena

Clerk Finch asked Attorney Kathy Riley if this would need to go in the newspaper. Mrs. Riley stated that it did not. Clerk Finch stated that she will put this on the Village website and on the MagEBoard. Marshal Zamora stated that he has seen Ordinances that specify the footage. Mr. Nelson asked if the Village should at a height. Attorney Kathy Riley stated that she would check on the footage of the aerial fireworks and see if it should be added. Clerk Finch stated that she would contact the Attorney General's Office to let them know the Emergency Ordinance was passed.

Mr. Nelson motioned to approve said Emergency Ordinance pending any additions from the Village Attorney, seconded by Mr. Brown.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:
Mrs. Middleton AYE
Mr. Nelson AYE
Mr. Brown AYE
The motion carried unanimously.

Discussion & Possible Decision Concerning The Sale Of The Following Equipment:

a. Generator - Serial #PD001B 932

Clerk Finch stated that the last time this item was open for bids, no bids were made. She stated that people showed interest, but the Village never received any bids. Clerk Finch requested approval to put the generator out to bid once more. Mrs. Middleton asked what the bid was previously. Clerk Finch stated that it was set at $750.00.

Mrs. Middleton motioned to put the generator out for bid with a minimum bid of $750.00 with bids to be opened at the June 25th regular meeting, seconded by Mr. Nelson.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:
Mr. Brown AYE
Mr. Nelson AYE
Mrs. Middleton AYE
The motion carried unanimously.

Discussion & Possible Decision Regarding Approval Of Quote From A-1 Communications Supply Co.
Mayor Rumpf stated that this quote included radios for the fire department and the ambulance. Clerk Finch stated that A-1 Communications was on the State Price Agreement.

Mrs. Middleton motioned to approve the quote in the amount of $3,161.34, seconded by Mr. Brown.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:
Mr. Brown AYE
Mrs. Middleton AYE
Mr. Nelson AYE
The motion carried unanimously.

Discussion & Possible Decision Regarding Approval Of Quotes For Chip Sealing Project
Clerk Finch presented a break down of the costs and a description of the work that would be done to Elm, Spruce, Pine Ash & Cedar Streets for the Chip Sealing Project. Clerk Finch stated that Socorro County Road Department would charge $15,667.60 to sweep, spread the rock, and roll the streets. Holly Frontier Oil would charge $42,348.76 for the oil and to fog seal the streets as per the State Price Agreement. A-1 Quality Redi-Mix would charge $15,914.85 for 3/8" chips washed and delivered, with a total of $73,931.21 for the whole project.

Mr. Nelson motioned to accept the quotes presented and move forward with the chip sealing project, seconded by Mr. Brown.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:
Mr. Nelson AYE
Mr. Brown AYE
Mrs. Middleton AYE
The motion carried unanimously.

Mrs. Middleton asked Clerk Finch if she could provide the in-kind hours that the Village has put in for the streets by the next meeting. Clerk Finch stated that she would work on that.

Public Input – 1 Topic Per Person – 3 Minute Limit
No public input was given.

Executive Session – 10-15-1(H)(2) – Limited Personnel Matter
Mrs. Middleton motioned to go into Executive Session at 6:35 p.m., seconded by Mr. Nelson.

Clerk Finch requested a roll call vote:
Mr. Brown AYE
Mrs. Middleton AYE
Mr. Nelson AYE
The motion carried unanimously.

a. Assistant Clerk

Mrs. Middleton motioned go back into regular session at 6:48 p.m. certifying that no other items were discussed, seconded by Mr. Nelson.

Mr. Brown AYE
Mrs. Middleton AYE
Mr. Nelson AYE
The motion carried unanimously.

Discussion & Possible Decision Regarding Approval Of Hiring Assistant Clerk

Mayor Rumpf presented the name of Ms. Alejandra Paez to approve for hire as full-time Assistant Clerk.

Mr. Nelson motion to hire Ms. Paez as the full-time Assistant Clerk, seconded by Mr. Brown.

Mayor Rumpf suggested that Clerk Finch request a roll call vote:
Mrs. Middleton AYE
Mr. Nelson AYE
Mr. Brown AYE
The motion carried unanimously.

Ms. Paez expressed that she is very thankful for the opportunity to work with the Village. She stated that it is close to home and she does not plan on going anywhere. She thanked to Mayor and Board for hiring her.

Mr. Nelson motioned to adjourn the meeting at 6:50 p.m., seconded by Mr. Brown. The motion carried unanimously.

Respectfully Submitted,

Stephanie Finch, CMC, CPO
Clerk/Treasurer

Richard Rumpf
Mayor

Minutes Taken By:

Carleen Gomez, CMC
Deputy Clerk

Minutes of the Special Meeting of the Village of Magdalena
Board of Trustees
Held Monday, June 18, 2018 at 6:00 p.m.

DRAFT

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

Present: Mayor Richard Rumpf, James Nelson, Donna Dawson, Clark Brown, Carleen Gomez – Deputy Clerk, Attorney Kathy Riley

Absent: Lynda Middleton

Guests: Elizabeth Briggs, Mariah Martinez, Alejandra Paez, Von Apachito, John W. Briggs

Mayor Richard Rumpf requested that Ms. Donna Dawson lead the gallery in reciting the Pledge of Allegiance.

Approval of Agenda: Mr. Nelson motioned to approve the agenda as presented, seconded by Ms. Dawson. The motion carried unanimously.

Executive Session – 10-15-1(H)(2) – Limited Personnel Matter
Ms. Dawson motioned to go into Executive Session at 6:02 p.m., seconded by Mr. Brown.

Mayor Rumpf suggested that Deputy Clerk Gomez request a roll call vote:
Ms. Dawson AYE
Mr. Nelson AYE
Mr. Brown AYE
The motion carried unanimously.

a. Clerk/Treasurer
Mr. Nelson motioned to go back into regular session at 6:25 p.m., seconded by Ms. Dawson.

Mayor Rumpf suggested that Deputy Clerk Gomez request a roll call vote:
Mr. Brown AYE
Ms. Nelson AYE
Ms. Dawson AYE
The motion carried unanimously.

Public Input – 1 Topic Per Person – 3 Minute Limit
No public input was given.

Ms. Dawson motioned to adjourn the meeting at 6:25 p.m., seconded by Mr. Nelson. The motion carried unanimously.

Respectfully Submitted,

Carleen Gomez, CMC
Deputy Clerk

Richard Rumpf
Mayor

Stephanie Finch

From: donotreply@godaddy.com
Sent: Wednesday, June 20, 2018 1:34 PM
To: Stephanie Finch
Subject: villageofmagdalena.com Request to be Placed on Agenda: Form Submission

Date of Meeting Requested:
06/25/2018
Name:
Kayla & Tyler Scartaccini
Phone
575-418-7796
Email:
tyler87825@gmail.com
Subject:
Community Park
Item request will be:
Discussion/Action
Brief description of topic to be discussed:
We would like to discuss with the Board of possibly getting a committee together to dedicate a spot for a community playground/park with playground equipment.
Submitted File 1:

This message was submitted from your website contact form:
https://www.villageofmagdalena.com/request-to-be-placed-on-agenda.html

Use your free GoDaddy Email Marketing Starter account to follow up with contacts who agreed to receive email campaigns! Click here to get started.

VILLAGE OF MAGDALENA
BOARD OF TRUSTEES
RESOLUTION №. 2018-06

DESIGNATING A BANK TO RECEIVE MUNICIPAL FUNDS

WHEREAS, the Board of Trustees of the Village of Magdalena met upon notice a meeting duly published at Village Hall, 108 N. Main, Magdalena, New Mexico 87825 on June 18, 2018, at 6:00 p.m. as required by law; and,

WHEREAS, pursuant to NMSA 1978 Section 3-37-1(A) the governing body is the board of finance of the municipality; and,

WHEREAS, pursuant to NMSA 1978 Section 3-37-1(C) the municipal treasurer shall supervise the depositing and safekeeping of all money belonging to the municipality; and, with the advice and consent of the municipal board of finance, designate banks qualified to receive on deposit money entrusted to his or her care; and,

WHEREAS, Wells Fargo Bank, the only bank with an office within the Village, had been designated as the qualified bank; and,

WHEREAS, Wells Fargo Bank is closing its operations in Magdalena.

NOW, THEREFORE, BE IT RESOLVED that the Board Trustees of the Village of Magdalena, acting in its capacity as the Board of Finance hereby designates _____ as a bank(s) qualified to receive on deposit money entrusted to the Village.

APPROVED, ADOPTED, AND PASSED on this 25th day of June 2018.

Approved:

_____
Richard Rumpf, Mayor

Attested:

_____
Stephanie Finch, Clerk/Treasurer

VILLAGE OF MAGDALENA PROCUREMENT POLICY RESOLUTION NO. 2018-07

A RESOLUTION PROVIDING FOR THE FAIR AND EFFICIENT MANNER OF PURCHASING TANGIBLE PERSONAL PROPERTY AND SERVICES IN THE VILLAGE OF MAGDALENA; ESTABLISHING AN EFFECTIVE DATE AND PENALTIES.

WHEREAS, the Board of Trustees of the Village of Magdalena finds that it is necessary to adopt rules and regulations to provide for the fair and equitable treatment of all persons involved in public procurement in the Village; and,

WHEREAS, the Board of Trustees seeks to maximize the purchasing value of public funds; and,

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

Contents

PURCHASING RULES AND REGULATIONS 6
1.0 DEFINITIONS 7
2.0 PURCHASE REQUESTS 16
2.1 SPECIFICATION FOR PURCHASE REQUISTIONS 16
2.2 SMALL PURCHASES 17
2.3 PROFESSIONAL SERVICES 18
3.0 EXEMPTIONS FROM THE PROCUREMENT CODE 18
4.0 SOLE SOURCE 19
5.0 EMERGENCY PROCUREMENTS 20
5.1 SOLE SOURCE AND EMERGENCY PROCUREMENTS: CONTENT AND 21
SUBMISSION OR RECORD; PUBLICATION OF AWARD TO WEB SITE AND SUNSHINE PORTAL 21
6.0 GARAGE LIABILITY REQUIREMENT 22
7.0 COMPETITIVE SEALED BIDS 22
7.1 COMPETITIVE SEALED BIDS: REQUIREMENTS 22
7.2 COMPETITIVE SEALED BIDS: REQUEST FOR BIDS 22
7.3 SIGNATURES FOR RFB 23
7.4 CAMPAIGN CONTRIBUTION DISCLOSURE 23
7.5 AMENDMENTS TO REQUEST FOR BIDS 23
7.6 COMPETITIVE SEALED BIDS: PUBLIC NOTICE 23
7.7 COMPETITIVE SEALED BIDS: RECEIPT AND ACCEPTANCE OF BIDS 24
7.8 COMPETITIVE SEALED BIDS: CORRECTION OR WITHDRAWAL OF BIDS 25
7.9 COMPETITIVE SEALED BIDS: BID OPENING 25
7.10 COMPETITIVE SEALED BIDS: AWARD 25
7.11 COMPETITIVE SEALED BIDS: MULTI-STEP SEALED BIDDING 25
7.12 COMPETITIVE SEALED BIDS: IDENTICAL BIDS 26
8.0 COMPETITIVE SEALED PROPOSALS 26
8.1 COMPETITIVE SEALED PROPOSALS: CONDITIONS FOR USE 26
8.2 COMPETITIVE SEALED PROPOSALS: REQUEST FOR PROPOSALS 26
8.3 SIGNATURES FOR RFP 27
8.4 CAMPAIGN CONTRIBUTION DISCLOSURE 27
8.5 COMPETITIVE SEALED PROPOSALS: PUBLIC NOTICE 27
8.6 AMENDMENTS TO THE REQUEST FOR PROPOSALS 28

8.7 MODIFICATION OR WITHDRAWAL OF PROPOSALS 28
8.8 LATE PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS 28
8.9 RECEIPT AND OPENING OF PROPOSALS 28
8.10 COMPETITIVE SEALED PROPOSALS: EVALUATION FACTORS 29
8.11 COMPETITIVE SEALED PROPOSAL: NEGOTIATIONS 29
8.12 COMPETITIVE SEALED PROPOSALS: DISCLOSURE; RECORD 29
8.13 COMPETITIVE SEALED PROPOSALS: AWARD 29
9.0 PROCUREMENT OF PROFESSIONAL SERVICES 29
9.1 PROCUREMENT OF PROFESSIONAL SERVICES; SELECTION AND AWARD 29
9.2 PROCUREMENT OF PROFESSIONAL SERVICES; PROFESSIONAL TECHNICAL ADVISORY ASSISTANCE 29
9.3 CONTRACTS FOR THE DESIGN AND INSTALLATION OF MEASURES FOR THE CONSERVATION OF NATURAL RESOURCES 30
9.4 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS; 31
ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS; 31
ADDITIONAL REQUIREMENTS 31
9.5 PUBLIC WORKS PROJECT DELIVERY SYSTEM; DESIGN AND BUILD 31
PROJECTS AUTHORIZED 31
9.6 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS: 32
ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS; 32
SELECTION PROCESS 32
9.8 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS: AWARD OF ARCHITECT; ENGINEERING, LANDSCAPE ARCHITECT AND 33
SURVEYING CONTRACTS 33
9.9 ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL AND SURVEYING CONTRACTS 34
10.0 BID SECURITY 34
10.1 BID SECURITY: REQUIREMENTS 34
10.2 DIRECTED SURETYSHIP PROHIBITED: PENALTY 34
10.3 BID SECURITY: REJECTION OF BIDS 35
10.4 BID AND PERFORMANCE BONDS: ADDITIONAL REQUIREMENTS 35
10.5 BONDING OF SUBCONTRACTORS 35
11.0 MULTIPLE SOURCE AWARD 35
11.1 MULTIPLE SOURCE AWARD: LIMITATIONS ON USE 35

11.2 MULTIPLE SOURCE AWARD: DETERMINATION REQUIRED 35
12.0 REJECTION OR CANCELLATION OF BIDS OR PROPOSALS 35
12.1 CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS 36
12.2 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS: 36
12.3 REJECTION OR CANCELLATION OF BIDS OR REQUESTS FOR 37
PROPOSALS: NEGOTIATIONS 37
12.4 IRREGULARITIES IN BIDS OR PROPOSALS 38
12.5 RESPONSIBILITY OF BIDDERS AND OFFERORS 38
12.6 PREQUALIFICATION OF BIDDERS 38
13.0 CONSTRUCTION CONTRACTS 38
13.1 CONSTRUCTION CONTRACTS: CENTRAL PURCHASING OFFICE 38
13.2 CONSTRUCTION CONTRACTS: CONSTRUCTION MANAGEMENT 38
SERVICES 38
13.3 CONSTRUCTION CONTRACT: RIGHT TO INSPECT PLANT 39
14.0 PROCUREMENT UNDER EXISTING CONTRACTS 39
15.0 COOPERATIVE PROCUREMENT 39
15.1 COOPERATIVE PROCUREMENT: AUTHORIZED 39
15.2 COOPERATIVE PROCUREMENT: RECYCLED CONTENT GOODS 40
16.0 SALE, ACQUISITION OR USE OF PROPERTY BY THE VILLAGE 40
17.0 COST OR PRICING DATA 40
17.1 COST OR PRICING DATA: REQUIRED 40
17.2 COST OR PRICING DATA: NOT REQUIRED 40
17.3 COST OR PRICING DATA: CHANGE ORDERS OR CONTRACT 41
MODIFICATIONS 41
17.4 COST OR PRICING DATA: CHANGE ORDERS, CONTRACT 41
MODIFICATIONS, EXCEPTIONS 41
17.5 COST OR PRICING DATA: CERTIFICATION REQUIRED 41
17.6 COST OR PRICING DATA: PRICE ADJUSTMENT PROVISION REQUIRED 41
17.7 COST OR PRICE DATA: ANALYSIS 41
17.8 COST PRINCIPLES: REGULATIONS 42
17.9 AUDIT OF COST OR PRICING DATA 42
18. CONTRACT AUDIT 42
19. TYPES OF CONTRACTS 42

19.1 MULTI-TERM CONTRACTS: SPECIFIED PERIOD 42
19.2 MULTI-TERM CONTRACTS: DETERMINATION PRIOR TO USE..... 43
19.3 MULTI-TERM CONTRACTS: CANCELLATION DUE TO UNAVAILABILITY OF FUNDS 43
20. PROCUREMENT OF USED ITEMS 43
20.1 PROCUREMENT OF USED ITEMS: APPRAISAL REQUIRED 43
20.2 TRADE OR EXCHANGE OF USED ITEMS: APPRAISAL REQUIRED 44
20.3 RECEIPT: INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES 44
21. PAYMENTS PURCHASES 45
22. BRAND-NAME SPECIFICATION 45
22.1 BRAND-NAME SPECIFICATION: USE 45
22.2 BRAND-NAME SPECIFICATION: COMPETITION 46
22.3 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED 46
CHARACTERISTICS 46
22.4 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED LANGUAGE .. 46
23. UNIFORM CONTRACT CLAUSES 46
24. PRICE ADJUSTMENTS 46
25. PROCUREMENT PROTEST 47
25.1 RIGHT TO PROTEST 47
25.2 PROCUREMENTS AFTER PROTEST 47
25.3 AUTHORITY TO RESOLVE PROTESTS 47
25.4 PROTEST: DETERMINATION 47
25.5 PROTEST: NOTICE OF DETERMINATION 48
26.0 AUTHORITY TO DEBAR OR SUSPEND 48
26.1 CAUSES FOR DEBARMENT OR SUSPENSION: TIME LIMIT 48
26.2 DEBARMENT OR SUSPENSION: DETERMINATION 49
27. EXECUTION OF CONTRACT 49
27.1 REMEDIES PRIOR TO EXECUTION OF CONTRACT 49
27.2 RATIFICATION OR TERMINATION AFTER EXECUTION OF CONTRACT 49
27.3 JUDICIAL REVIEW 49
28. ASSISTANCE TO SMALL BUSINESS 50
28.1 ASSISTANCE TO SMALL BUSINESS: POLICY 50

28.2 ASSISTANCE TO SMALL BUSINESS: DUTIES OF THE PURCHASING AGENT 50
28.3 ASSISTANCE TO SMALL BUSINESS: BID BONDS; REDUCTION 50
29. ANTIPOVERTY PROGRAM BUSINESS 50
30. BRIBES, GRATUITIES AND KICKBACKS 50
30.1 UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED 51
30.2 BRIBES, GRATUITIES AND KICKBACKS: CONTRACT REFERENCE 51
REQUIRED 51
30.3 CONTINGENT FEES PROHIBITED 51
30.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED 51
30.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT AND UNLAWFUL EMPLOYEE PARTICIPATION PERMITTED 51
30.6 USE OF CONFIDENTIAL INFORMATION PROHIBITED 52
31. CIVIL PENALTY 52
32. SEVERABILITY 52
33. REPEAL OF FORMER POLICY 52

PURCHASING RULES AND REGULATIONS

Centralization of Procurement Authority

All procurement for the Village shall be performed by a purchasing officer designated by the Board of Trustees, except as otherwise provided in the Procurement Code. The Village shall identify their designated purchasing officer and information identifying the Village's purchasing office to the State Purchasing Agent on or before January 1 of each year. The purchasing officer must be certified by the State Purchasing Agent. After July 1, 2015, only a certified chief purchasing officer may make determinations, including determination regarding exemptions; issue purchase orders; authorize small purchases; and approve procurement pursuant to the Procurement Code.

1.0 DEFINITIONS

1.1 GENERAL

Regulations regarding definitions are adopted to clarify particular terms defined in the New Mexico Procurement Code (Section 13-1-28 through 13-1-199 NMSA, 1978 – the "Procurement Code") and governed by rule 1 of these regulations.

1.2 Definition: ARCHITECTURAL SERVICES

"Architectural services" means services related to the art and science of designing and building structures for human habitation or use and includes planning, providing preliminary studies, designs, specifications, working drawings and providing for general administration of construction contracts.

1.3 Definition: BRAND-NAME SPECIFICATION

"Brand-name specification" means a specification limited to describing an item by manufacturer's name or catalogue number.

1.4 Definition: BRAND-NAME OR EQUAL SPECIFICATION

"Brand-name or equal specification" means a specification describing one or more items by manufacturer's name or catalogue number to indicate the standard of quality, performance or other pertinent characteristics and providing for the substitution of equivalent items.

1.5 Definition: BUSINESS

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

1.6 Definition: CAMPAIGN CONTRIBUTION

"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 individual 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.

1.7 Definition: CATALOGUE PRICE
"Catalogue price" means the price of items of tangible personal property in the most current catalogue, price list, schedule or other form that:
a. is regularly maintained by the manufacturer or vendor of an item;
b. is either published or otherwise available for inspection by a customer.

1.8 Definition: CENTRAL PURCHASING OFFICE
"Central purchasing office" means that office or officer within the Village responsible for the control of procurement of items of tangible personal property, services or construction. There is hereby created a Central Purchasing Office within the Village to be administered by the Central Purchasing Officer who shall be the Procurement Director of the Village or his/her designee except as otherwise provided in the Procurement Code.

1.9 Definition: CHANGE ORDER
"Change order" means a written order signed and issued by the central purchasing officer or his/her designee directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order with or without the consent of the contractor.

1.10 Definition: CENTRAL PURCHASING OFFICER
"Central Purchasing Officer" or "Purchasing Officer" means that person within the Village's central purchasing office who is responsible for the control of procurement of items of tangible personal property, services, or construction.

1.11 Definition: CONFIDENTIAL INFORMATION
"Confidential information" means any information, which is available to an employee because of the employee's status as an employee of a state agency or a local public body and which is not a matter of public knowledge or available to the public on request.

1.12 Definition: CONSTRUCTION
A. "Construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any:

1. road, highway, bridge, parking area or related project;
2. building, stadium or other structure;
3. airport, subway or similar facility;
4. park, trail, athletic field, golf course or similar facility;
5. dam, reservoir, canal, ditch or similar facility;
6. sewage or water treatment facility, power generating plant, pump station,
7. natural gas compressing station or similar facility;

8. sewage, water, gas or other pipeline;
9. transmission line;
10. radio, television or other tower;
11. water, oil or other storage tank;
12. shaft, tunnel or other mining appurtenance;
13. electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances
14. or water conditioners;
15. air conditioning conduit, heating or other similar mechanical work; or
16. similar work, structures or installations.

B. "Construction" shall also include:

1. leveling or clearing land;
2. excavating earth;
3. drilling wells of any type, including seismographic shot holes or core
4. drilling; and
5. similar work, structures or installations.

1.13 Definition: CONSTRUCTION MANAGEMENT AND CONSTRUCTION MANAGER

A. "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project.

B. "Construction manager" means a person who acts as an agent of the Village for construction management, for whom the Village shall assume all the risks and responsibilities.

1.14 Definition: CONTRACT

"Contract" means any agreement for the procurement of items of tangible personal property, services or construction.

1.15 Definition: CONTRACT MODIFICATION

"Contract modification" means any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.

1.16 Definition: CONTRACTOR

"Contractor" means any business having a contract with a state agency or local public body.

1.17 Definition: COOPERATIVE PROCUREMENT

"Cooperative procurement" means procurement conducted by or on behalf of more than one state agency or local public body, or by a state agency or local public with an external procurement unit.

1.18 Definition: COST ANALYSIS
"Cost analysis" means factual information concerning the cost of labor, material, overhead and other cost elements that are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.

1.19 Definition: COST DATA
"Cost data" means factual information concerning the cost of labor, material, overhead and other cost elements that are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.

1.20 Definition: COST REIMBURSEMENT CONTRACT
"Cost reimbursement contract" means a contract that provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

1.21 Definition: DEFINITE QUANTITY CONTRACT
"Definite quantity contract" means a contract that requires the contractor to furnish a specified quantity of services, items of tangible personal property or construction at or within a specified time.

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

1.23 Definition: DIRECT OR INDIRECT PARTICIPATION
"Direct or indirect participation" means involvement through decision, approval, disapproval, recommendation, formulation of any part of a purchase request, influencing the content of any specification, investigation, auditing or the rendering of advice.

1.24 Definition: EMPLOYEE
"Employee" means an individual receiving a salary, wages or per diem and mileage from the Village whether elected or not any non-compensated individual performing personal services as an elected or appointed official or otherwise for the Village.

1.25 Definition: ENGINEERING SERVICES
"Engineering services" means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, insofar as they involve safeguarding life, health

or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practices include the performance of architectural work incidental to the practice of engineering. "Engineering services" does not include responsibility for the superintendence of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place.

1.26 Definition: EXTERNAL PROCUREMENT UNIT
"External procurement unit" means any procurement organization not located in this state that, if in this state, would qualify as a state agency or a local public body. An agency of the United States government is an external procurement unit.

1.27 Definition: FINANCIAL INTEREST

"Financial interest" means:

1. Holding a position in a business as officer, director, trustee or partner or holding any position in management; or
2. Ownership of more than five percent interest in a business.

1.28 Definition: FIRM FIXED PRICE CONTRACT
"Firm fixed price contract" means a contract which has a fixed total price or fixed unit price.

1.29 Definition: GRATUITY
"Gratuity" means a payment, loan subscription, advance, deposit of money, service or anything of more than nominal value, received or promised, unless consideration of substantially equal or greater value is exchanges.

1.30 Definition: HEAVY ROAD EQUIPMENT
"Heavy road equipment" means any motor-driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price of over one thousand dollars ($1,000).

1.31 Definition: HIGHWAY RECONSTRUCTION
"Highway reconstruction" means the rebuilding, altering or repairing of any road, highway, bridge, parking area or related project. "Highway reconstruction" does not include routine maintenance.

1.32 Definition: IMMEDIATE FAMILY
"Immediate family" means a spouse, children, parents, brothers and sisters.

1.33 Definition: INDEFINITE QUANTITY CONTRACT
"Indefinite quantity contract" means a contract that requires the contractor to furnish an indeterminate quantity of specified services, items of tangible personal property or

construction during a prescribed period of time at a definite unit price or at a specified discount from list or catalogue prices.

1.34 Definition: INVITATION or REQUEST FOR BIDS
"Invitation for bids" means all documents, including those attached or incorporated by reference, utilized for soliciting sealed bids.

1.35 Definition: LANDSCAPE ARCHITECTURAL SERVICES
"Landscape architectural services" means services including not limited to consultation, investigation, reconnaissance, research design, preparation of drawings and specifications and administration of contracts where the dominant purposes of such services are:

1. The preservation or enhancement of land uses and natural features.
2. The location and construction of functional approaches for structures, pathways or walkways; or
3. The design of trails, plantings and landscape irrigation.

Excluded from the provisions of this section are the services of architects, engineers and surveyors as defined in the Procurement Code.

1.36 Definition: LOCAL PUBLIC WORKS PROJECT
"Local public works project" means a project of a local public body which uses architectural or engineering services requiring professional services costing fifty thousand dollars ($50,000) or more, or landscape architectural or surveying services requiring professional services costing ten thousand dollars ($10,000) or more, excluding applicable state and local gross receipts taxes.

1.37 Definition: LOCAL PUBLIC BODY
"Local public body" means every political subdivision of the state and agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school boards and municipalities, except as exempted pursuant to the Procurement Code.

1.38 Definition: MULTI-TERM CONTRACT
"Multi-term contract" means a contract having a term longer than one year.

1.39 Definition: MULTIPLE SOURCE AWARD
"Multiple source award" means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one bidder of offeror.

1.40 Definition: NOTICE OF REQUEST/INVITATION FOR BIDS
"Notice of invitation for bids" means a document issued by a procurement officer which contains a brief description of the services, construction or items of tangible personal property to be procured, the location where copies of the invitation for bid may be obtained, the location where bids are to be received, the cost, if any for copies of plans

and specifications, the date and place of the bid opening and such information as the procurement officer deems necessary.

1.41 Definition: PRICE AGREEMENT
"Price agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

1.42 Definition: PENDENCY OF THE PROCUREMENT PROCESS
"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.

1.43 Definition: PERSON
"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

1.44 Definition: PRICE ANALYSIS
"Price analysis" means the evaluation of pricing data without analysis of the separate cost components and profits.

1.45 Definition: PRICING DATA
"Pricing data" means factual information concerning prices for items identical to or substantially similar to those being procured.

1.46 Definition: PROCUREMENT
"Procurement" means:

1. Purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and
2. All procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration.

1.47 Definition: PROCUREMENT OFFICER
"Procurement officer" means any person or a designee authorized by a state agency or a local public body to enter into or administer contracts and make written determinations with respect thereto.

1.48 Definition: PROFESSIONAL SERVICES
"Professional services" means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or

businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.

1.49 Definition: PURCHASE ORDER
"Purchase order" means the documents issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.

1.50 Definition: PURCHASE REQUEST
"Purchase request" means the document by which a using agency requests that a contract be obtained for a specified service, construction or item of tangible personal property and may include but is not limited to the technical description of the requested items, delivery schedule, transportation requirements suggested sources of supply and supporting information.

1.51 Definition: QUALIFIED PRODUCTS LIST
"Qualified products list" means a list of items of tangible personal property described by model or catalogue number which, prior to the solicitation of competitive sealed bids or competitive sealed proposals, are items the state purchasing agent or a central purchasing office has determined will meet the applicable specifications.

1.52 Definition: REGULATION
"Regulation" means any rule, order or statements of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public body to affect persons not members or employees of the issuer.

1.53 Definition: REQUEST FOR PROPOSALS
"Request for proposals" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

1.54 Definition: RESPONSIBLE BIDDER
"Responsible bidder" means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

1.55 Definition: RESPONSIBLE OFFEROR
"Responsible offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his 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 described in the proposal.

1.56 Definition: RESPONSIVE BID
"Responsive bid" means a bid that conforms in all material respects to the requirements set forth in the invitation for bids. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements.

1.57 Definition: RESPONSIVE OFFER
"Responsive offer" means an offer that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price, quality, quantity or delivery requirements.

1.58 Definition: SELECTION COMMITTEE
"Selection Committee" A committee appointed by the Mayor, Village Clerk, or his/her designee to evaluate and select all offerors to a request for proposals.

1.59 Definition: SERVICES
"Services" means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. "Services" includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.

1.60 Definition: SMALL BUSINESS
"Small business" means a business, not a subsidiary or division of another business, having an average annual volume for the preceding three fiscal years which does not exceed one million five hundred thousand dollars ($1,500,000).

1.61 Definition: SPECIFICATION
"Specification" means a description of the physical or functional characteristics or of the nature of items of tangible personal property, services or construction. "Specification" may include a description of any requirement for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery.

1.62 Definition: SURVEYING SERVICES
"Surveying services" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

1. The measuring and locating of lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volume;
2. The monumenting of property boundaries and the platting and layout of lands and subdivisions thereof;
3. The application of photogram metric methods used to derive topographic and other data;

4. The establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogram metric methods, construction surveys for engineering and architectural public works; and,

5. The preparation and perpetuation of maps, records, plats, field notes and property descriptions.

1.63 Definition: TANGIBLE PERSONAL PROPERTY

"Tangible personal property" means tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.

2.0 PURCHASE REQUESTS

2.1 SPECIFICATION FOR PURCHASE REQUISTIONS

A) All using agency requests for procurement shall contain:
   i) A statement of need and the specifications of the item(s), construction or service(s) needed; and
   ii) A statement of the quantity needed and a general statement of quality.

B) The central purchasing office may consolidate procurements and may contract for items of tangible personal property or services at a firm price at which the items or services needed during the year or portion of a year shall be purchased.

C) A brand name may be used when the brand name is the clearest and best understood manner of describing the item. When a brand name is used, it must be followed by the words "or equal," except for those instances where the materials or services are designed to match other in use on a particular public improvement, either completed or in the course of completion, or where a unique or novel product application is required to be used in the public interest as per Section 22.

D) The Central Purchasing Office shall notify the department who filed the requisition, if any changes are needed of the department's requisition, relative to specifications, price, contractual conditions, quantity or delivery costs, proper account use, and prior to the issuance of a purchase order.

E) A purchase order shall be a statement of intent to purchase and shall clearly state the quantity and quality of items to be purchased. The Central Purchasing Office may consolidate purchases and may contract for items at a firm price at which the materials or services needed during the year, or portion of a year, shall be purchased.

F) Procurement shall not be artificially divided so as to constitute a small purchase under these regulations.

G) All contracts and solicitations shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

2.2 SMALL PURCHASES

A) A central purchasing office shall procure services, (except for professional services, see section 2.3) construction or items of tangible personal property having a value not exceeding sixty thousand dollars ($60,000) in accordance with these regulations:

i) **$499.99 or less**. Purchases shall be made according to the **best obtainable price** from a vendor or catalogue. Note: purchases may be from petty cash, not to exceed $50.00, in accordance with petty cash purchases as established by written procedures.

ii) **$500 to $1,499.99.** Purchases shall be made according to the **best obtainable price** provided at least 2 businesses shall be solicited using bona fide *phone* quotations from a vendor or catalogue.

iii) **$1,500 to $9,999.99**. Purchases shall be made according to the **best obtainable price** provided at least 3 bona fide *phone* quotations from different vendors and catalogues have been obtained for such purchases. These quotations are required to be recorded on a procurement quotation form and made a part of the procurement file.

(a) Proposed expenditures over $5000 must be brought before the Board for approval.

iv) **$10,000 to $60,000.00**. Purchases shall be made according to the **best obtainable price** provided at least 3 bona fide *written* quotations are obtained from vendors or catalogues. The Purchasing Agent may, in unique circumstances, waive request for quotation procedures, and require 3 bona fide phone quotations.

v) **Above $60,000.00**. All purchases exceeding $60,000 require formal bid procedures as set forth in this policy.

B) If any responsible bid is the same as the lowest bid, the Central Purchasing Office shall notify the Department Director involved in the purchase, who shall be given the option of selecting the bidder to whom the award will be given.

C) Without regard to the bid requirements of these regulations, the Village may purchase materials at prices equal to or less than the prices paid for material meeting the same specifications or standards purchased under State Purchasing Agent or Procurement Officer if the following conditions are met:

i) Prices must be from a current contract entered into by the State Purchasing Agent.
ii) The quantity purchased shall not exceed the quantity that may be purchased under the applicable State Purchasing Agent contract.
iii) The material shall be purchased at the best available price.
iv) The Requisition for Purchase shall adequately identify the State Purchasing Agent contract relied upon, recording: contract number, item(s) number, contract expiration date and copy of contract attached.

v) The Central Purchasing Office shall retain for public inspection and for the use of auditors a copy of each state purchasing agent contract relied upon to make purchases without seeking competitive bids.
vi) Purchases shall not be made from other than state contract vendors if the contract so provides and if the state contract has been arrived at by utilization of the requirements of other than State Agencies under the supervision of the State Purchasing Agent.

2.3 PROFESSIONAL SERVICES

With regard to contracts for technical and professional services, including but not limited to contracts for legal services, appraisal services, engineering consulting, or other consulting services, when the contract is for less than $60,000.00, a determination shall be made by the department involved in the procurement stating the service is required, the criteria used for selection, the persons, partnerships, corporations or associations considered and the basis for the final selection.

3.0 EXEMPTIONS FROM THE PROCUREMENT CODE

The provisions of the Procurement Code shall not apply to:

A) Procurement of items of tangible personal property or services by the Village from a state agency, a local public body or external procurement unit except as otherwise provided in Section 13-1-135 through 13-1-137 NMSA 1978.

B) Printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies, or state or federal Courts.

C) Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services.

D) Purchases of books and periodicals from the publishers or copyright holders thereof;

E) Travel or shipping by common carrier or by private conveyance or to meals and lodging.

F) Purchase of livestock at auction rings or the procurement of animals to be used for research and experimentation or exhibit.

G) Contracts with businesses for public school transportation services.

H) Minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required.

I) The issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants.

J) Contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3- 26 and 33-3-27 NMSA 1978.

K) Contracts for maintenance of grounds and facilities at highway rests stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps.

L) Contracts and expenditures for services or items for tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration.

M) Contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978.

N) Contracts with professional entertainers.

O) Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts.

P) Contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978.

Q) Works of art for museums or for display in public buildings or places.

R) Purchases of advertising in all media, including radio, television, print and electronic.

S) Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act.

T) purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973; and,

U) procurements exempt from the Procurement Code as otherwise provided by law.

4.0 SOLE SOURCE

A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the central purchasing office determines, in writing, that:

(1) there is only one source for the required service, construction or item of tangible personal property;

(2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and

(3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

The central purchasing office shall use due diligence in determining the basis for the sole source procurement, including reviewing available sources and consulting the using agency, and shall include its written determination in the procurement file.

The central purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the state agency or a local public body.

The central purchasing office shall not circumvent this section by narrowly drafting specifications so that only one predetermined source would satisfy those specifications. A notice of intent to award a sole source contract must be posted on the Village's website, or if there is not a Village website, on the state purchasing agent's website, at least 30 days before awarding sole source contract, which notice must identify at a minimum (1) the parties to the contract, (2) the nature and quantity of the service, construction or property being contracted for, and (3) the contract amount.

Any qualified potential contractor who was not awarded the sole source contract may submit a written protest to the central purchasing office within fifteen (15) calendar days after the notice is posted.

5.0 EMERGENCY PROCUREMENTS

A. The central purchasing office may make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances.

B. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, fires, epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

(1) the functioning of government;
(2) the preservation or protection of property; or
(3) the health or safety of any person.

C. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.

D. The central purchasing office shall use due diligence in determining the basis for the emergency procurement and for the selection of the particular contractor. The determination shall be in writing and included in the procurement file.

E. Money expended for planning and preparing for an emergency response shall be accounted for and reported to the legislative finance committee and the department of finance and administration within sixty (60) days after the end of each fiscal year. A central purchasing office may not designate or authorize others to make emergency procurements.

F. Department directors who obtain services, construction, or items of tangible personal property through an emergency procurement shall prepare a letter defining the emergency situation no later than five (5) days after such procurement with the central purchasing office.

5.1 SOLE SOURCE AND EMERGENCY PROCUREMENTS: CONTENT AND SUBMISSION OR RECORD; PUBLICATION OF AWARD TO WEB SITE AND SUNSHINE PORTAL

A. The central purchasing office shall maintain, for a minimum of three years, records of sole source and emergency procurements. The record of each such procurement shall be public record and shall contain:

1) The contractor's name and address;

2) The amount and term of the contract;

3) A listing of the services, construction or items of tangible personal property procured under the contract;

4) Whether the contract was a sole source or emergency procurement contract; and

5) The justification for the procurement method.

B. Prior to award of a sole source procurement contract, the central purchasing office shall provide to the department of information technology for posting on the sunshine portal; and forward the same information to the legislative finance committee:

i) the contractor's name and address,

ii) the amount and term of the contract,

iii) a listing of the services, construction or items of tangible personal property procured under the contract,

iv) whether the contract was a sole source or emergency procurement contract, and;

v) the justification for the procurement method

6.0 GARAGE LIABILITY REQUIREMENT

In the case of vehicle repair (mechanics), vendor shall provide garage liability insurance.

7.0 COMPETITIVE SEALED BIDS

A) All procurement shall be achieved by competitive sealed bid pursuant to Sections 7.1 through 7.12 of the Procurement Code, except procurement achieved pursuant to the following sections of the Procurement Code (13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978); Section 8.0 (8.1 through 8.13) competitive sealed proposals; Section 2.2, small purchases; Section 4.0, sole source procurement; Section 5.0, emergency procurements; Section 14.0, existing contracts; and, Section 28.0, purchases from antipoverty program businesses.

7.1 COMPETITIVE SEALED BIDS: REQUIREMENTS

A) The Request for Bid (RFB) is used to initiate a competitive sealed bid procurement. The RFB shall include the following:
   i) The specifications for the services, construction or items of tangible personal property to be procured.
   ii) All contractual terms and conditions applicable to the procurement, including:
      a) Affidavit
      b) Campaign Contribution Disclosure
      c) Bid bond, if applicable.
   iii) The term of the contract and conditions of renewal or extension, if any.
   iv) Instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening.
   v) A notice that the RFB may be cancelled and that any and all bids may be rejected in whole or in part when it is in the best interest of the Village of Magdalena.
   vi) Notice published in at least one newspaper ten (10) days prior to bid opening.
   vii) A notice that reads substantially as follows:
      a) The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick-backs.

7.2 COMPETITIVE SEALED BIDS: REQUEST FOR BIDS

A request for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where bids are to be received and the date, time and place of the bid opening.

7.3 SIGNATURES FOR RFB

Review and signatures are required from the Village Procurement Officer. The final signed RFB/RFP is complete only when a signature and a bid number are issued by the Purchasing Officer. The RFB/RFP is then scheduled for an opening date and recorded in the bid list. The completed RFB/RFP original is then recorded with the Village Procurement Officer. A copy of the signed original is submitted to the Purchasing Department.

7.4 CAMPAIGN CONTRIBUTION DISCLOSURE

Pursuant to NMSA 1978, Section 13-1-191.1 (2007), any prospective contractor seeking to enter into a contract with any state agency or local public body must file the form provided in Appendix "A" with the state agency or local public body.

7.5 AMENDMENTS TO REQUEST FOR BIDS

The Purchasing Officer and/or the Department involved in the purchase may amend the invitation for bids in compliance with the Procurement Code and Village regulations to:

A) Make any changes in the invitation for bids such as changes in quantity, purchase descriptions, specifications, delivery schedules, opening dates.
B) Correct defects or ambiguities.
C) Furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting a bid or if the lack of such information would prejudice the other bidders.
D) The amendment shall be mailed first class to all bidders who have supplied their current mailing address, pursuant to the bidder, not less than seven (7) days prior to the scheduled bid opening.

7.6 COMPETITIVE SEALED BIDS: PUBLIC NOTICE

A) An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. The invitation or notice shall be published at least once in a newspaper of general circulation in the area at least ten (10) days prior to bid opening. These requirements of publication are in addition to any other procedures that may be adopted by the Procurement Officer to notify prospective bidders that bids will be received, including publication in a trade journal, if available.

B) The Procurement Officer shall send copies of the notice or invitation for bids involving the expenditure of more than sixty thousand dollars ($60,000) to those businesses that have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and that have paid any required fees. The Procurement Officer may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used

exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.

C) The Procurement Officer may satisfy the requirement of sending copies of a notice or invitation for bids by distributing the documents to prospective bidders through electronic media. The central purchasing office will not accept RFB/RFP by electronic media.

D) As used in this section, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. The Procurement Officer shall make copies of invitations for bids for construction contracts available to prospective bidders. The Procurement Officer may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the applicable central purchasing office.

7.7 COMPETITIVE SEALED BIDS: RECEIPT AND ACCEPTANCE OF BIDS

A) Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code (13-1-28 NMSA 1978). In addition to the requirement for the prime contractor and subcontractors to be registered as provided in Section 13-4-13.1 NMSA 1978, bids shall be evaluated based on the requirements set forth in the invitation for bids, which requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or lifecycle costs that will affect the bid price shall be objectively measurable, which shall be defined by rule. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids. A bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 shall not be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with that section may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978.

B) If the lowest responsible bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest

bid was up to 10 percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budget project funds.

7.8 COMPETITIVE SEALED BIDS: CORRECTION OR WITHDRAWAL OF BIDS

A) A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the invitation for bids as the place where bids are to be received. After bid opening, no modifications in bid prices or other provisions of bids shall be permitted. A low bidder alleging a material mistake of fact which makes his bid non-responsive may be permitted to withdraw its bid if: The mistake is clearly evident on the face of the bid documents; or The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

B) Any decision by a procurement officer to permit or deny the withdrawal of a bid on the basis of a mistake contained therein shall be supported by a determination setting forth the grounds for the decision.

7.9 COMPETITIVE SEALED BIDS: BID OPENING

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the state purchasing agent or a central purchasing office, together with the name of each bidder, shall be recorded, and the record and each bid shall be open to public inspection.

7.10 COMPETITIVE SEALED BIDS: AWARD

A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or applicable local option tax but that the contracting agency shall be required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract.

7.11 COMPETITIVE SEALED BIDS: MULTI-STEP SEALED BIDDING

When the Procurement Officer makes a determination that it is impractical to initially prepare specifications to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids.

7.12 COMPETITIVE SEALED BIDS: IDENTICAL BIDS

When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the Procurement Officer may:

A) Award pursuant to the multiple source award provisions of Sections 126 and 127 (13-1-153 and 13-1-154 NMSA 1978) of the Procurement Code;
B) Award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;
C) Award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business;
D) Award by lottery to one of the identical low bidders; or
E) Reject all bids and resolicit bids or proposals for the required services, construction or items of tangible personal property.

8.0 COMPETITIVE SEALED PROPOSALS

8.1 COMPETITIVE SEALED PROPOSALS: CONDITIONS FOR USE

A) Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a local public body is procuring professional services or a design and build project delivery system, or when the Procurement Officer or designee makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.
B) Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.
C) Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1 120 through 13-1-124 NMSA 1978
D) Competitive sealed proposals shall also be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23-1 NMSA 1978).

8.2 COMPETITIVE SEALED PROPOSALS: REQUEST FOR PROPOSALS

A) The request for proposals (RFP) is used to initiate competitive sealed proposal procurement. At a minimum the RFP shall include the following:
   i) The specifications for the services or items of tangible personal property to be procured.
      a) All contractual terms and conditions applicable to the procurement.
      b) Affidavit
      c) Campaign Contribution Disclosure
      d) Bid bond, if applicable.
   ii) Instructions concerning the submission and response to questions.

iii) The term of the contract and conditions of renewal or extension, if any.
iv) Instructions and information to offerors, including the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed.
v) All of the evaluation factors and the relative weights to be given to the factors in evaluating proposals.
vi) A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions.
vii) A notice that the RFP may be cancelled and those any and all proposals may be rejected in whole or in part when it is in the best interest of the Village.
viii) A statement of how proposed costs should be submitted.
ix) Notice published in one newspaper at least ten (10) days prior to RFP submission date.
x) A notice that reads substantially as follows:

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

B) In the case of requests for competitive qualifications-based proposals, price shall be determined by formal negotiations related to scope of work.
C) All specifications shall be drafted to ensure maximum practicable competition and fulfill the requirements of state agencies and local public bodies.

8.3 SIGNATURES FOR RFP

Review and signatures are required from the Village Procurement Officer. The final signed RFB/RFP is complete only when a signature and a bid number are issued by the Purchasing Officer. The RFB/RFP is then scheduled for an opening date and recorded in the bid list. The completed RFB/RFP original is then recorded with the Village Procurement Officer. A copy of the signed original is submitted to Purchasing Department.

8.4 CAMPAIGN CONTRIBUTION DISCLOSURE

Pursuant to NMSA 1978, Section 13-1-191.1 (2007), any prospective contractor seeking to enter into a contract with the Village must file this form with the Village.

8.5 COMPETITIVE SEALED PROPOSALS: PUBLIC NOTICE

Public notice of the request for proposals shall be given in the same manner as provided in Section 13-1-104 NMSA 1978 of the Procurement Code, and must be published in at least one newspaper ten (10) days prior to RFP submission date.

8.6 AMENDMENTS TO THE REQUEST FOR PROPOSALS

A) Prior to submission of proposals, amendments to the RFP may be made only as follows:
   i) Form. An amendment to the RFP shall be identified as such and shall require that offerors acknowledge its receipt. The amendment shall refer to the portions of the RFP it amends.
   ii) Distribution. Amendments shall be sent to all prospective offerors known to have received the RFP.
   iii) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective offerors to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone or by other electronic means and confirmed in the amendment.
   iv) Use of amendments. Amendments should be used to:
      a) make any changes in the RFP, such as changes in scope of services, opening dates, etc.;
      b) correct defects or ambiguities; or
      c) furnish to other offerors information given to one offeror if such information will assist the other offerors in submitting offerors or if the lack of such information would prejudice the other offerors.

B) After submission of proposals, amendments to the RFP shall be distributed only to short-listed offerors. The short-listed offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be cancelled and a new RFP issue.

8.7 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn prior to the established due date only in accordance with this policy. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers must be submitted by short-list offerors.

8.8 LATE PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS

Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late, and may only be considered in accordance with this Policy.

8.9 RECEIPT AND OPENING OF PROPOSALS

A) Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date.

B) Proposals shall not be opened publicly and shall not be open to public inspection until after an offeror has been selected for award of a contract. An offeror may request in writing nondisclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

8.10 COMPETITIVE SEALED PROPOSALS: EVALUATION FACTORS
The request for proposals shall state the relative weight to be given to the factors in evaluating proposals. Numerical rating systems are required for procurements of information systems resources.

8.11 COMPETITIVE SEALED PROPOSAL: NEGOTIATIONS
A) Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

8.12 COMPETITIVE SEALED PROPOSALS: DISCLOSURE; RECORD
The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

8.13 COMPETITIVE SEALED PROPOSALS: AWARD
The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the Village, taking into consideration the evaluation factors set forth in the request for proposals.

9.0 PROCUREMENT OF PROFESSIONAL SERVICES

9.1 PROCUREMENT OF PROFESSIONAL SERVICES; SELECTION AND AWARD
The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the Village, taking into consideration the evaluation factors set forth in the request for proposals.

9.2 PROCUREMENT OF PROFESSIONAL SERVICES; PROFESSIONAL TECHNICAL ADVISORY ASSISTANCE
A) The Village shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society listed in Subsection D of this section, an individual to serve as a professional technical advisor. The professional technical

advisor shall be a senior member of an architectural, engineering, surveying or landscape architectural business with experience appropriate to the type of local public works project proposed and shall be a resident licensed architect, professional engineer, surveyor or landscape architect in the state who possesses at least ten years of experience in responsible charge as defined in the Architectural Act (Chapter 61, Article 15 NMSA 1978), the Engineering and Surveying Practice Act (Chapter 61, Article 23 NMSA 1978) or the Landscape Architects Act (Chapter 61, Article 24B NMSA 1978), respectively.

B) The professional technical advisor to the Village shall serve as an agent of the Village and shall be indemnified and held harmless. He may be reimbursed as provided in the Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978) for per diem and mileage in connection with his service as a professional technical advisor and shall receive no other compensation, perquisite or allowance.

C) The duties and responsibilities of the professional technical advisor shall include but may not be limited to the following activities:
   i) Advise the local public body in the development of requests for proposals for engineering, surveying, architectural or landscape architectural services procured by the local public body;
   ii) Advise the local public body in giving public notice of requests for proposals:
   iii) Advise in the evaluation and selection of professional businesses to perform services for the local public body, based upon demonstrated competence and qualification for the type of professional services required; and
   iv) Assist in contract negotiations.

D) Professional technical advisors shall be obtained through the professional technical advisory board, a consortium of the consulting engineers council of New Mexico and the professional engineers in private practice division of the New Mexico society of professional engineers; the New Mexico professional surveyors; the New Mexico society of architects; or the New Mexico chapter of the American society of landscape architects.

E) No individual or firm whose principal officer, director or employee serves as a professional technical advisor to a local public body shall be permitted to submit a proposal to the local public body during the period in which the individual, principal, officer, director or employee serves as a professional technical advisor to the local public body; however, nothing in this section shall prohibit an individual or firm from submitting a proposal to any local public body in which the individual or a principal, officer, director or employee is not serving as a professional technical advisor.

9.3 CONTRACTS FOR THE DESIGN AND INSTALLATION OF MEASURES FOR THE CONSERVATION OF NATURAL RESOURCES

The Village may solicit competitive sealed proposals for a contract that provides for both the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23-1 NMSA 1978).

9.4 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS; ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS; ADDITIONAL REQUIREMENTS

In addition to compliance with the requirements of Sections 13-1-112 through 13-1-114 and 13-1-116 through 13-1-118 NMSA 1978, a local public body, when procuring the services of architects, landscape architects, engineers or surveyors for public works projects, shall comply with Sections 13-1-120 through 13-1-124 NMSA 1978.

9.5 PUBLIC WORKS PROJECT DELIVERY SYSTEM; DESIGN AND BUILD PROJECTS AUTHORIZED

A) Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the Procurement Officer makes a determination in writing that it is appropriate and in the best interest of the Village to use the system on a specific project. The determination shall be issued only after the Procurement Officer has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:
   i) The extent to which the project requirements have been or can be adequately defined;
   ii) Time constraints for delivery of the project;
   iii) The capability and experience of potential teams with the design and build process;
   iv) The suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
   v) The capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

B) When a determination has been made by the Procurement Officer that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor properly licensed in New Mexico for the type of work required.

C) Except as provided in Subsections F and G of this section, for each proposed Village public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:
   i) During phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and

ii) During phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest ranked firm.

D) Except as provided in Subsections F and G of this section, to ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate rules applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.

E) The Village shall make the decision on a design and build project delivery system for a Village public works project. A state agency shall not make the decision on a design and build project delivery system for a Village public works project.

F) The requirements of Subsections C and D of this section and the minimum construction cost requirement of Subsection A of this section do not apply to a design and build project delivery system and services procured for the project if:

i) The maximum allowable construction cost of the project is four hundred thousand dollars ($400,000) or less; and

ii) The only requirements for architects, engineers, landscape architects, or surveyors is limited to either site improvements or adaptation for a pre-engineered building system.

G) The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978.

9.6 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS: ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS; SELECTION PROCESS

A) For each proposed Village or construction management contract, the architect, engineer, landscape architect, construction management and surveyor selection committee, or local selection committee, as appropriate, shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

B) The appropriate selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by the using agency authorizing the project:

i) Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;

ii) Capacity and capability of the business, including any consultants, their representatives, qualifications and locations, to perform the work, including any specialized services, within the time limitations;
iii) Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;
iv) Proximity to or familiarity with the area in which the project is located;
v) The amount of design work that will be produced by a New Mexico business within this state;
vi) The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated; and
vii) Notwithstanding any other provisions of this subsection, price may be considered in connection with construction management contracts, unless the services are those of an architect, engineer, landscape architect or surveyor.

C) Notwithstanding the requirement of Subsections A and B of this section, if fewer than three businesses have submitted a statement of qualifications for a particular project, the appropriate committee may:
   i) Rank in order of qualifications and submit to the secretary or local governing authority of the public body for award those businesses which have submitted a statement of qualifications; or
   ii) Recommend termination of the selection process pursuant to Section 13-1-131 NMSA 1978. Any proposal received in response to the terminated solicitation is not public information and shall not be made available to competing offerors.

D) The names of all businesses submitting proposals and the names of all businesses, if any selected for interview shall be public information. After an award has been made, the appropriate selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen days after an award is made.

9.8 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS: AWARD OF ARCHITECT; ENGINEERING, LANDSCAPE ARCHITECT AND SURVEYING CONTRACTS

The designee of a local public body shall negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services at compensation determined in writing to be fair and reasonable. In making this decision, the designee of a local public body shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services. Should the designee of a local public body be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee of

a local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee of a local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee of a local public body shall formally terminate negotiations with that business. The designee of the local public body shall then undertake negotiations with the third most qualified business. Should the designee of a local public body by unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the secretary or his designee or the designee of a local public body shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The representative of a local public body shall publicly announce the business selected for award.

9.9 ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL AND SURVEYING CONTRACTS

A) All contracts between a local public body and an architect for the construction of new buildings or for the remodeling or renovation of existing buildings shall contain the provision that all designs, drawings, specifications, notes and other work developed in the performance of the contract are the sole property of the local public body.

B) All documents, including drawings and specifications, prepared by the architect, engineer, landscape architect or surveyor are instruments of professional service. If the plans and specifications developed in the performance of the contract shall become the property of the contracting agency upon completion of the work, the contracting agency agrees to hold harmless, indemnify and defend the architect, engineer, landscape architect or surveyor against all damages, claims and losses, including defense costs, arising out of any reuse of the plans and specifications without the written authorization of the architect, engineer, landscape architect or surveyor.

10.0 BID SECURITY

10.1 BID SECURITY: REQUIREMENTS

Bid security shall be required of bidders for construction contracts procured by competitive sealed bid when the price is estimated by the procurement officer to exceed twenty-five thousand dollars ($25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state; or the equivalent in cash, or otherwise supplied in a form satisfactory to the Village.

10.2 DIRECTED SURETYSHIP PROHIBITED: PENALTY

A. Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-4-18 NMSA 1978, an employee of the state or its political subdivisions, or a person acting or purporting to act on behalf of that employee, shall not

require a bidder or an offeror in a procurement for a construction contract pursuant to the Procurement Code (13-1-28 NMSA 1978) to make application or furnish financial data for a surety bond or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.
B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

10.3 BID SECURITY: REJECTION OF BIDS
A. When the invitation for bids requires bid security, noncompliance by the bidder requires that the bid be rejected.
B. If a bidder is permitted to withdraw its bid before award, no action shall be made against the bidder or the bid security.

10.4 BID AND PERFORMANCE BONDS: ADDITIONAL REQUIREMENTS
A. Bid and performance bonds or other security may be required for contracts for items of tangible personal property or services as the Procurement Officer deems necessary to protect the interests of the Village. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.
B. As to performance and payment bonds for construction contracts, see the requirements of Section 13-4-18 NMSA 1978.

10.5 BONDING OF SUBCONTRACTORS
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 fifty thousand dollars ($50,000) or more.

11.0 MULTIPLE SOURCE AWARD

11.1 MULTIPLE SOURCE AWARD: LIMITATIONS ON USE
A Multiple Source Award may be made pursuant to Section 13-1-110 NMSA 1978 of the Procurement code when awards to two or more bidders or offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of the Village without sacrifice of economy or service. Awards shall be limited to the least number of suppliers in one geographical area necessary to meet the requirements of the Village. A multiple source award shall be based upon the lowest responsible bid or proposal received in each geographical area.

11.2 MULTIPLE SOURCE AWARD: DETERMINATION REQUIRED
The Procurement Officer shall make a determination setting forth the reasons for a multiple source award.

12.0 REJECTION OR CANCELLATION OF BIDS OR PROPOSALS

12.1 CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS

A) Prior to opening:

i) As used in this section, "opening" means the date set for opening of bids or receipt of proposals.

ii) Prior to opening, a solicitation may be canceled in whole or in part when the Procurement Officer makes a written determination that such action is in the state's best interest for reasons including, but not limited to:

a) the services, construction, or items of tangible personal property are no longer required;

b) the Village no longer can reasonably expect to fund the procurement; or

c) proposed amendments to the solicitation would significantly change the nature of the procurement.

iii) When a solicitation is canceled prior to opening, notice shall be sent to all businesses solicited. The notice shall:

a) identify the solicitation;

b) briefly explain the reason for cancellation; and

c) where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar services, construction, or items of tangible personal property.

B) After opening.

i) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:

a) all of the bids and proposals are nonresponsive;

b) the services, construction, or items of tangible personal property are no longer required;

c) ambiguous or otherwise inadequate specifications were part of the solicitation;

d) the solicitation did not provide for consideration of all factors of significance to the using agency;

e) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

f) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

g) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

ii) A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Paragraph (3) of Subsection A of this section.

12.2 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:

A) Reasons for rejection.

i) Bids. As used in this section, "bid" includes both competitive sealed bids and small purchase quotations. Reasons for rejecting a bid shall include but are not limited to:
   a) the business that submitted the bid is non-responsible; or
   b) the bid is not responsive; or
   c) the service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the RFB.

ii) Proposals. As used in this section, "proposal" includes both competitive sealed proposals and small purchase offers. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and the Village's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:
   a) the business that submitted the proposal is non-responsible; or
   b) the proposal is not responsive; or
   c) the proposed price is clearly unreasonable; or
   d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.

B) Written determination required. A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the Procurement Officer and made a part of the procurement file. In the case of procurements for information system resources, a written determination which contains the reasons for the rejection of an individual proposal shall be prepared by the Procurement Officer and shall be included as an attachment to the evaluation committee report as a part of the procurement file. Further, a copy of the determination shall also be sent to the nonresponsive offeror.

12.3 REJECTION OR CANCELLATION OF BIDS OR REQUESTS FOR PROPOSALS: NEGOTIATIONS

An invitation for bids, a request for proposals or any other solicitation may be cancelled or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state agency or a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file. If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then a new invitation for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the Procurement Officer may purchase the tangible personal property, construction or services in the open market at the best obtainable price.

12.4 IRREGULARITIES IN BIDS OR PROPOSALS

The Procurement Officer may waive technical irregularities in the form of the bid or proposal of the low bidder or offeror that do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offer.

12.5 RESPONSIBILITY OF BIDDERS AND OFFERORS

If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, a determination that the bidder or offeror is not a responsible bidder or offeror, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the bidder or offeror is not a responsible bidder or offeror.

12.6 PREQUALIFICATION OF BIDDERS

A business may be pre-qualified by a central purchasing office as a bidder or offeror for particular types of services, construction or items of tangible personal property. Mailing lists of potential bidders or offers shall include but shall not be limited to such prequalified businesses.

13.0 CONSTRUCTION CONTRACTS

13.1 CONSTRUCTION CONTRACTS: CENTRAL PURCHASING OFFICE

The award and execution of contracts for major construction, including but not limited to roads, bridges, airports, buildings and dams, shall be made by the Board of Trustees. The procurement officer responsible for the procurement shall give notice to prospective bidders pursuant to Section 13-1-10 NMSA 1978.

13.2 CONSTRUCTION CONTRACTS: CONSTRUCTION MANAGEMENT SERVICES

A) A construction management services contract may be entered into for any construction or Village public works project when the Village makes a determination that it is in the public's interest to utilize construction management services. Construction management services shall not duplicate and are in addition to the normal scope of separate architect or engineer contracts, the need for which may arise due to the complexity or unusual requirements of a project as requested by the Village.

B) To insure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project, on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate regulations, which shall be adopted by the Village and shall be followed by the Village when procuring construction management services as authorized in Subsection A of this section.

C) A local public body shall make the decision on a construction management services contract for a Village public works project. A state agency shall not make the decision on a construction management services contract for a Village public works project.

13.3 CONSTRUCTION CONTRACT: RIGHT TO INSPECT PLANT

A contract or a solicitation therefore may include a provision permitting the Village, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded.

14.0 PROCUREMENT UNDER EXISTING CONTRACTS

A) Notwithstanding the requirements of Sections 13-1-102 through 13-1-118 NMSA 1978, the Procurement Officer may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

i) At a price equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the Village and the purchase order adequately identifies the contract relied upon; or

ii) With a business which has a current exclusive or nonexclusive price agreement with the state purchasing agent or a central purchasing office for the item, services or construction meeting the same standards and specifications as the items to be procured if the following conditions are met:

a) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and

b) The purchase order adequately identifies the price agreement relied upon.

B) The Procurement Officer shall retain for public inspection and for the use of auditors a copy of each federal supply contractor state purchasing agent price agreement relied upon to make purchases without seeking competitive bids or proposals.

15.0 COOPERATIVE PROCUREMENT

15.1 COOPERATIVE PROCUREMENT: AUTHORIZED

A) The Village may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to this subsection shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the

contracting parties may be located outside this state. An approved and signed copy of all cooperative procurement agreements entered into pursuant to this subsection shall be filed with the state purchasing agent. A cooperative procurement agreement entered into pursuant to this subsection is limited to the procurement of items of tangible personal property, services or construction.

B) Notwithstanding the provisions of Subsection A of this section, a cooperative procurement agreement providing for mutually held funds or for other terms and conditions involving public funds or property included in Section 11-1-4 NMSA 1978 shall be entered into pursuant to the provisions of the Joint Powers Agreements Act (110101 to 11-1-7 NMSA 1978)

C) The Village may cooperate by agreement with the State purchasing agent in obtaining contracts or price agreements, and such contract or agreed prices shall apply to purchase orders subsequently issued under the agreement.

15.2 COOPERATIVE PROCUREMENT: RECYCLED CONTENT GOODS

A) The Procurement Officer shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the general services department or with other central purchasing offices.

B) For purposes of this section, "recycled content goods" means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

16.0 SALE, ACQUISITION OR USE OF PROPERTY BY THE VILLAGE

The Village may sell property to, acquire property from or cooperatively use any items of tangible personal property or services belonging to a state agency or another local body or external procurement unit:

A) In accordance with an agreement entered into with the approval of the state board of finance or the data processing and data communications planning council; or

B) Subject to the provisions of Sections 3-46-1 through 3-46-45; 3-54-1 through 3-54-3; 3-60-1 through 3-60-37 and 3-60A-1 through 3-60A-48 NMSA 1978.

17.0 COST OR PRICING DATA

17.1 COST OR PRICING DATA: REQUIRED

When the Procurement Officer, a prospective contractor shall submit cost or pricing data when the contract is expected to exceed twenty-five thousand dollars ($25,000) and is to be awarded by a method other than competitive sealed bids.

17.2 COST OR PRICING DATA: NOT REQUIRED

The cost or pricing data relating to the award of a contract shall not be required when:

A) The procurement is based on competitive sealed bid;

B) The contract price is based on established catalogue prices or market prices;

C) The contract price is set by law or regulation;
D) The contract is for professional services; or
E) The contract is awarded pursuant to the Public Building Energy Efficiency Act (Chapter 6, Article 23 NMSA 1978).

17.3 COST OR PRICING DATA: CHANGE ORDERS OR CONTRACT MODIFICATIONS

When required by the Village, a contractor shall submit cost or pricing data prior to the executive of any change order or contract modification, whether or not cost or pricing data was required in connection with the initial award of the contract, when the change order or modification involves aggregate increases or aggregate decreases that are expected to exceed twenty-five thousand dollars ($25,000).

17.4 COST OR PRICING DATA: CHANGE ORDERS, CONTRACT MODIFICATIONS, EXCEPTIONS

The submission of cost or pricing data relating to the execution of a change order or contract modification shall not be required when unrelated change orders or contract modifications for which cost or pricing data would not be required are consolidated for administrative convenience.

17.5 COST OR PRICING DATA: CERTIFICATION REQUIRED

A contractor, actual or prospective, required to submit cost or pricing data shall certify that to the best of its knowledge and belief the cost or pricing data submitted was accurate, complete and current as of a specified date.

17.6 COST OR PRICING DATA: PRICE ADJUSTMENT PROVISION REQUIRED

Any contractor award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the local public body, including profit or fee, shall be adjusted to exclude any significant sums by which the local public body reasonably finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date specified.

17.7 COST OR PRICE DATA: ANALYSIS

A cost analysis or a price analysis, as appropriate, may be conducted prior to the award of a contract other than one awarded by competitive sealed bidding. A written record of such cost or price analysis shall be made a part of the procurement.

17.8 COST PRINCIPLES: REGULATIONS

The Procurement Officer has the authority to issue regulations may promulgate regulations setting forth principles to be used to determine the permissibility of incurred costs for the purpose of reimbursing costs to a contractor.

17.9 AUDIT OF COST OR PRICING DATA

A) The Village may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data, to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain books and records that relate to such cost or pricing data for three years from the date of final payment under the contract unless a shorter period is otherwise authorized in writing.

B) The Village shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

18. CONTRACT AUDIT

The Village shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

19. TYPES OF CONTRACTS

Subject to the limitations of Sections 13-1-150 to 13-1-154 NMSA 1978 of the Procurement Code, any type of contract, including but not limited to definite quantity contracts, indefinite quantity contracts and price agreements, which will promote the best interests of the state agency or a local public body may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance. A cost-reimbursement contract may be used when such contract is likely to be less costly or it is impracticable to otherwise obtain the services, construction or items of tangible personal property required.

19.1 MULTI-TERM CONTRACTS: SPECIFIED PERIOD

A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars ($25,000), may be entered into for any period of time deemed to be in the best interests of

the Village not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting.

If the amount of the contract is twenty-five thousand dollars ($25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency and Water Conservation Act (Public Facility Energy Efficiency and Water Conservation Act, Chapter 6, Article 23 NMSA 1978), the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

A contract for professional services may not exceed for four years, including all extensions and renewals, except for the following:

A) Services required to support or operate federally certified Medicaid, financial assistant and child support enforcement management information or payment systems;
B) Services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997,Chapter 125;
C) A multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding; and
D) Services relating to the implementation, operation and administration of the Education Trust Act (21-21K-1 to 21-21K-7 NMSA 1978).

19.2 MULTI-TERM CONTRACTS: DETERMINATION PRIOR TO USE

Prior to the utilization of a multi-term contract, the Procurement Officer shall make a determination that:

a. The estimated requirements cover the period of the contract and are reasonably firm and continuing; and

b. The contract will serve the best interests of the Village.

19.3 MULTI-TERM CONTRACTS: CANCELLATION DUE TO UNAVAILABILITY OF FUNDS

When funds are not appropriated or otherwise made available to support continuation of performance of a multi-term contract in a subsequent fiscal period, the contract shall be cancelled.

20. PROCUREMENT OF USED ITEMS

20.1 PROCUREMENT OF USED ITEMS: APPRAISAL REQUIRED

A central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars ($5,000), shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, including but not limited to requiring a warrant for at least ninety (90) days after date of delivery and an independent "certificate of working order" by a qualified mechanic or appraiser.

20.2 TRADE OR EXCHANGE OF USED ITEMS: APPRAISAL REQUIRED

A) A central purchasing office, when trading in or exchanging used items of tangible personal property the estimated value of which exceeds five thousand dollars ($5,000) as part-payment on the procurement of new items of tangible personal property, shall:
   i) Have an independent appraisal made of the items to be traded or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged and location where the items to be traded in or exchanged may be inspected; or
   ii) Have two written quotes for purchase of the property at a specified price.

B) Award shall be based upon the net bid. Bidders or offerors shall compute their net bid or offer by deducting the appraised value or highest quote of the items to be traded in or exchanged from the gross bid or offer on the new items of tangible personal property to be procured. If an amount offered in trade is less than the appraised value or the highest quote but is found to be a personal property and in the best interest of the agency, the bid or offer may be accepted. Documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a public record.

20.3 RECEIPT: INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES

The using agency is responsible for inspecting and accepting or rejecting deliveries. The using agency shall determine whether the quantity is as specified in the purchase order or contract and whether the quality conforms to the specifications referred to or included in the purchase order or contract. If inspection reveals that the delivery does not conform to the quantity or quality specified in the purchase order or contract, the using agency shall immediately notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery. In case the vendor fails to comply, the Village shall have no obligation to pay for the nonconforming items of tangible personal property. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify to the Village that delivery has been completed and is satisfactory.

21. PAYMENTS PURCHASES

A) No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the Procurement Officer or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code (13-1-28 NMSA 1978).

B) Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the Procurement Officer or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the Procurement Officer or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.

C) Except as provided in Subsection D of this section, upon certification by the Procurement Officer or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.

D) If the Procurement Officer or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contract may proceed to provide remedial action.

E) Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission (public regulation commission).

22. BRAND-NAME SPECIFICATION

22.1 BRAND-NAME SPECIFICATION: USE

A brand-name specification may be used only when the Procurement Officer makes a determination that only the identified brand-name item or items will satisfy the needs of the Village.

22.2 BRAND-NAME SPECIFICATION: COMPETITION

The Procurement Officer shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 13-1-126 NMSA 1978 of the Procurement Code.

22.3 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED CHARACTERISTICS

Unless the Procurement Officer makes a determination that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand-name or equal specifications shall include a description of the particular design, function or performance characteristics which are required.

22.4 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED LANGUAGE

Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

23. UNIFORM CONTRACT CLAUSES

A) The Village may require by regulation that contracts include uniform clauses providing for termination of contracts, adjustments in prices, adjustments in time of performance or other contract provisions as appropriate, including but not limited to the following subjects:
   i) The unilateral right of the Village to order in writing:
      a) Changes in work within the scope of the contract; and
      b) Temporary stoppage of the work of the delay of performance;
   ii) Variations occurring between estimated quantities of work in a contract and actual quantities;
   iii) liquidated damages;
   iv) permissible excuses for delay or nonperformance;
   v) termination of the contract for default;
   vi) termination of the contract in whole or in part for the convenience of the Village;
   vii) assignment clauses providing for the assignment by the contractor to the Village of causes of action for violation of state or federal antitrust statutes;
   viii) identification of subcontractors by bidders in bids; and
   ix) uniform subcontract clauses in contracts.

B) The Village shall require by regulation that contracts include a clause imposing late payment charges against the Village in the amount and under the conditions stated in Section 13-1-158 NMSA 1978.

24. PRICE ADJUSTMENTS

Adjustments in price shall be computed in one or more of the following ways as specified in the contract:

A) By agreement on a fixed-price adjustment before commencement of performance or as soon thereafter as practicable;
B) By unit prices specified in the contract or subsequently agreed upon by the parties.
C) By the costs attributable to the events or conditions as specified in the contract or subsequently agreed upon by the parties;
D) By a provision for both upward and downward revision of stated contract price upon the occurrence of specified contingencies if the contract is form commercial items sold in substantial quantities to the general public with prices based upon established catalogue or list prices in a form regularly maintained by the manufacturer or vendor and published or otherwise available for customer inspection. In the event of revision of the stated contract price, the contract file shall be promptly documented by the Procurement Officer.
E) In such other manner as the contracting parties may mutually agree; or
F) In the absence of agreement by the parties, by a unilateral determination reasonably computed by the Village of the costs attributable to the events or conditions.

25. PROCUREMENT PROTEST

25.1 RIGHT TO PROTEST

Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the Procurement Officer. The protest shall be submitted in writing within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest.

25.2 PROCUREMENTS AFTER PROTEST

In the event of a timely protest under Section 13-1-172 NMSA 1978 of the Procurement Code, the Procurement Officer shall not proceed further with the procurement unless the Procurement Officer makes a determination that the award of the contract is necessary to protect substantial interests of the Village.

25.3 AUTHORITY TO RESOLVE PROTESTS

The Procurement Officer or designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder or offeror. This authority shall be exercised in accordance with regulations promulgated by the Village but shall not include the authority to award money damages or attorneys' fees.

25.4 PROTEST: DETERMINATION

The Procurement Officer or designee of shall promptly issue a determination relating to the protest. The determination shall:
A) State the reasons for the action taken; and
B) Inform the protestant of the right to judicial review of the determination pursuant to the Procurement Code.

25.5 PROTEST: NOTICE OF DETERMINATION

A copy of the determination issued under 13-1-175 NMSA 1978 of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerors involved in the procurement.

26.0 AUTHORITY TO DEBAR OR SUSPEND

The central purchasing office may suspend a person from consideration for award of contracts if the central purchasing office, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978. The term of a suspension pursuant to this section shall not exceed three months; however, if a person, including a bidder, offeror or contractor, has been charged with a criminal offense that would be a cause for debarment pursuant to Section 13-1-178 NMSA 1978, the suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for suspension no longer exists.
The central purchasing office, after reasonable notice to the person involved, shall have authority to recommend to the Board of Trustees the debarment of a person for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years. The authority to debar shall be exercised by the Board of Trustees in accordance with rules that shall provide for reasonable notice and a fair hearing prior to debarment.

26.1 CAUSES FOR DEBARMENT OR SUSPENSION: TIME LIMIT

A. The causes for debarment or suspension occurring within three years of the date final action on a procurement is taken include but are not limited to the following:
(1) criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
(2) civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
(3) conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;
(4) conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;
(5) criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;
(6) civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;
(7) civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act;
(8) violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the state purchasing agent or a central purchasing office to be so serious as to justify suspension or debarment action, including:

(a) willful failure to perform in accordance with one or more contracts; or
(b) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
(9) any other cause that the state purchasing agent or a central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or
(10) for a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

26.2 DEBARMENT OR SUSPENSION: DETERMINATION.
The Board of Trustees shall issue a written determination to debar or suspend. The determination shall:
A. state the reasons for the action taken; and
B. inform the debarred or suspended business involved of its rights to judicial review pursuant to Section 156 of the Procurement Code.

A copy of the determination made pursuant to Section 13-1-179 NMSA 1978 shall be mailed to the last known address on file with the state purchasing agent or central purchasing office, by first class mail, within three business days after issuance of the written determination; or transmitted electronically within three business days after issuance of the written determination.

27. EXECUTION OF CONTRACT

27.1 REMEDIES PRIOR TO EXECUTION OF CONTRACT
If prior to the execution of a valid, written contract by all parties and necessary approval authorities, the procurement officer makes a determination that a solicitation or proposed award of the proposed contract is in violation of law then the solicitation or proposed award shall be cancelled.

27.2 RATIFICATION OR TERMINATION AFTER EXECUTION OF CONTRACT
If after the execution of a valid, written contract by all parties and necessary approval authorities, procurement officer makes a determination that a solicitation or award of the contract was in violation of law and if the business awarded the contract did not act fraudulently or in bad faith:

A) The contract may be ratified, affirmed and revised to comply with law, provided that a determination is made that doing so is in the best interests of the Village; or
B) The contract may be terminated, and the contractor shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

27.3 JUDICIAL REVIEW
All actions authorized by the Procurement code (13-1-28 NMSA) for judicial review of a

determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

28. ASSISTANCE TO SMALL BUSINESS

28.1 ASSISTANCE TO SMALL BUSINESS: POLICY

It shall be the policy of this Village to encourage small businesses to do business with the Village.

28.2 ASSISTANCE TO SMALL BUSINESS: DUTIES OF THE PURCHASING AGENT

A) Purchasing agent shall issue publications designed to assist small businesses in learning how to do business with the state agencies and local public bodies.
B) Purchasing agent shall compile, maintain and make available source lists of small businesses for the purpose of encouraging procurement by the state agencies and local public bodies from small businesses.
C) Purchasing shall take all reasonable action to ensure that small businesses are solicited on each procurement for which they appear to be qualified.
D) Purchasing agent may develop training programs to assist small businesses in learning how to do business with the Village.
E) Purchasing agent or a central purchasing office may make special provisions for progress payments as such office or officer may deem reasonably necessary to encourage procurement from small businesses in accordance with regulations promulgated by the Board of Trustees.

28.3 ASSISTANCE TO SMALL BUSINESS: BID BONDS; REDUCTION

The procurement officer may reduce bid bond, performance bond or payment bond requirements authorized by the Procurement Code (13-1-28 NMSA 1978) to encourage procurement from small businesses.

29. ANTIPOVERTY PROGRAM BUSINESS

A) Without regard to the bid requirements of Section 75 of the Procurement Code, the procurement officer may negotiate a contract for materials grown, processed, or manufactured in this state by small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.
B) Prior to negotiating a contract under this section, the procurement officer shall make a determination of the reasonableness of the price and quality of the materials and that the public interest will best be served by the procurement.

30. BRIBES, GRATUITIES AND KICKBACKS

30.1 UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED

A) Except as permitted by the University Research Park Act (2-28-2 to 21-28-25 NMSA 1978), it is unlawful for any Village employee, as defined in the Procurement Code (13-1-28 NMSA 1978), to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.

B) An employee or any member of any employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust.

30.2 BRIBES, GRATUITIES AND KICKBACKS: CONTRACT REFERENCE REQUIRED

All contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

30.3 CONTINGENT FEES PROHIBITED

It is unlawful for a person or business to be retained or for a business to retain a person or business to solicit or secure a contract upon an agreement or understanding that the compensation is contingent upon the award of the contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business and persons or businesses employed by the Village which are providing professional services to the Village in anticipation of the receipt of federal or state grants or loans.

30.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It is unlawful for any Village employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

30.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT AND UNLAWFUL EMPLOYEE PARTICIPATION PERMITTED

The Village may grant a waiver from unlawful employee participation pursuant to Section 153 (13-1-190 NMSA 1978) of the Procurement Code, or contemporaneous employment pursuant to Section 166 (13-1-193 NMSA 1978) of the Procurement Code, upon making a determination that:

A) The contemporaneous employment of financial interest of the employee has been publicly disclosed;

B) The employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and

C) The employee participation is in the best interests of the Village.

30.6 USE OF CONFIDENTIAL INFORMATION PROHIBITED
It is unlawful for any Village employee or former employee to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

31. CIVIL PENALTY
Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars ($1,000) for each procurement in violation of any provision of the Procurement Code. The attorney general or the district attorney in the jurisdiction in which the violation occurs is empowered to bring a civil action for the enforcement of any provision of the Procurement Code. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

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

33. REPEAL OF FORMER POLICY
Any other ordinance, policy or resolution in conflict with the above provisions, are repealed with the adoption of this Resolution.

APPROVED, ADOPTED, AND PASSED on this _____ day of _____2018.

BOARD OF TRUSTEES OF THE VILLAGE OF MAGDALENA.

Approved:

_____
Richard Rumpf, Mayor

Attested:

_____
Stephanie Finch
Village Clerk/Treasurer

Request to Village of Magdalena for Use of Lodger's Tax
(Pursuant to Lodger's Tax Act Section 3-38-14 NMSA 1978)

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

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

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

1. This request is made by Magdalena Old timers Reunt (Applicant)
Address:
PO Box 772
Magdalena NM 87825

Phone: 505-506-8738 Email: _____

✓ 501-3C Non-Profit Entity; (provide proof)
____ For Profit Entity; (Private Individual/Entity)
____ Group/Organization without Non-Profit Status;
____ Other: _____

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

Name of Event:
Magdalena Old timers

Location of Event:
Magdalena NM

Description of Event:
3day Weekend event July 13, 14, + 15 2018
Rodeo, Indian Dancers
Food & Craft Vendors
Pit BBQ Parade, Street Dance
+ others events still in planning

Is this a fund raising event? Please describe:
fund Raising only to hold the event

Proposed Date of Event: 13, 14, & 15 July 2018

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

- <u>BEFORE EVENT</u>
  - Applicant is required to provide an estimated budget to include:
  Revenue (Income from sponsors, sales, booth space fees, etc.) and

EVENT/ORGANIZATION: Magdalena Old timers Reunion Assoc

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

INCOME SOURCES	ESTIMATE	ACTUAL
Donation Quilt Raffle	$1,000.00	
Vendors	2,000.00	
Parade + BBQ	$2,000	
Socorro City Lodgers tax	$2,000.00	2,000.00
TOTAL INCOME	$7,000.00	

EXPENSES	ESTIMATE	ACTUAL
cost of BBQ	$1,400.00	
Quilt materia	1,500.00	$1,6900
Print Flyer + Posters	$600.00	
Port + Potties	$1,800.00	
Kids Rodeo Prizes	$800.00	
Insurance	$1400.00	$1400.00
Indian Dancers	$1500.00	$1500.00
TOTAL EXPENSES	$7,6500.00	

MARKETING

Who is your target market? Surrounding area, with poster + flyers getting out to several other places in the State

How/where are you advertising your event? Does this reach your target market?

* Please include copies of all advertisements following event.

	ESTIMATE	ACTUAL
Number of Visitors at Event	2,000	
Number of Motel Rooms Filled	am told the rooms in town are all booked	

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

Expenses (advertising, rental fees, etc.).

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

2. Use of Funds

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

3. Terms and Conditions of this Request

A. Contractor is requesting $ 1500.00 in Lodger's Tax funds to be used as follows:

advertising of Port-A-Potties

B. Any other requests (ie. Use of Village property, police escort, etc. must be made at Village Hall).

This request is submitted the 27 day of March, 2018.

Naomi J Dawson
Applicant Signature

Stephanie Finel
Village of Magdalena

Approval

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

Richard Rumpf – Mayor

Sorry this has taken me so long to get back to you.
But things for Old Timers are coming together nicely.
The Rodeo is being put on by the NNRCA - Navaho Nation Rodeo Cowboy Assoc.
They are coming in at their own expense to do the Rodeo.
No gate fees once again free admission
Yah. So glad that contract with the group for the last 2 yrs is over and done with.
We will be having our BBQ on the grounds once again.
Also in the Indian Village we will have singers & dancers.
A great Friday night Street dance.
Still getting applications for the Vendors + the parade out.
If you have anyone you know of we are looking for wood for our BBQ
give me a call
Naomi Dawson 505-506-5735
We are still working on setting up many other things. Our insurance is already in place
the Rodeo group are coming down for a walk around the Arena, they will at that time bring me their copy of their insurance.

Thanks for your help in our endeavor to bring old timers back up to where is. was a great weekend

Norman Davis