



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

AGENDA

NOTICE OF REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES
MONDAY, SEPTEMBER 25, 2023, AT 5:00 PM
VILLAGE HALL 108 N. MAIN STREET

PLEASE SILENCE ALL ELECTRONIC DEVICES

MEMBERS OF THE PUBLIC WHO WISH TO ATTEND AND LISTEN TO THE MEETING VIA ZOOM MAY DO SO AT THE FOLLOWING LINK:
<https://us02web.zoom.us/j/2848694212?pwd=MVE4QjdhR2NQVFozQnZMbTlaRUtrQT09>

Meeting ID: 284 869 4212

Passcode: MAGDALENA

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1. **CALL TO ORDER**
 2. **ROLL CALL**
 3. **PLEDGE OF ALLEGIANCE**
 4. **APPROVAL OF AGENDA**
 5. **APPROVAL OF MINUTES**
 - a. **REGULAR MEETING – SEPTEMBER 11, 2023**
 6. **APPROVAL OF CASH BALANCE REPORTS**
 7. **APPROVAL OF BILLS**
 8. **MAYOR'S REPORT**
 9. **CLERK'S REPORT**
 10. **DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF RESOLUTION NO. 2023-20, PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM AND REQUEST FOR MATCH WAIVER ADMINISTERED BY NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE VILLAGE OF MAGDALENA TPF PROJECT CONTROL NUMBER LP10062 RESURFACING (CHIP SEAL) OF KELLY ROAD FROM US-60 TO HOP CANYON ROAD**
 11. **DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF STATE OF NEW MEXICO DEPARTMENT OF ADMINISTRATION FUND 93100 CAPITAL APPROPRIATION PROJECT 23-H3217 - \$150,000.00 TO PLAN, DESIGN, CONSTRUCT, REPLACE, RENOVATE AND EQUIP IMPROVEMENTS INCLUDING ELECTRICAL SYSTEMS, WATER SYSTEMS AND SAFETY LIGHTING AT THE RODEO GROUNDS IN MAGDALENA IN SOCORRO COUNTY**
 12. **EXECUTIVE SESSION – THE FOLLOWING MATTERS WILL BE DISCUSSED IN CLOSED SESSION: MOTION & ROLL CALL VOTE TO GO INTO EXECUTIVE SESSION AND THAT, PURSUANT TO NEW MEXICO STATE STATUTES SECTION 10-15-1, ONLY THE FOLLOWING MATTER WILL BE DISCUSSED IN CLOSED SESSION:**

a. NMSA 10-15-1(H)(2) LIMITED PERSONNEL MATTERS

i. SENIOR CENTER OFFICE ASSISTANT

- **MOTION & ROLL CALL VOTE TO RETURN TO REGULAR SESSION**
- **MOTION & ROLL CALL VOTE THAT MATTERS DISCUSSED IN CLOSED SESSION WERE LIMITED TO THOSE SPECIFIED IN MOTION FOR CLOSURE, AND THAT NO FINAL ACTION WAS TAKEN, AS PER NEW MEXICO STATUTES SECTION 10-15-1**

13. DISCUSSION & POSSIBLE DECISION TO HIRE A PART-TIME SENIOR CENTER OFFICE ASSISTANT

14. PUBLIC INPUT – 1 TOPIC PER PERSON - 3 MINUTE LIMIT

PUBLIC COMMENT MAY BE MADE IN PERSON OR VIA EMAIL (IF LESS THAN 3 MINUTES). EMAIL COMMENTS MAY BE MADE BY EMAILING COMMENTS TO: clerk@villageofmagdalena.com and/or mayor@villageofmagdalena.com THE DEADLINE FOR WRITTEN PUBLIC COMMENTS TO BE RECEIVED IS MONDAY, SEPTEMBER 25, 2023 AT 12:00 PM. EMAILED PUBLIC COMMENT MUST CONTAIN THE AUTHOR'S NAME AND PHYSICAL ADDRESS AND WILL BE ENTERED AND/OR READ INTO THE MEETING MINUTES

15. ADJOURNMENT

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

DRAFT

**MINUTES OF REGULAR MEETING OF THE VILLAGE OF MAGDALENA BOARD OF TRUSTEES
MONDAY, SEPTEMBER 11, 2023, AT 5:00 PM
VILLAGE HALL 108 N. MAIN STREET**

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

<https://us06web.zoom.us/j/2848694212?pwd=MVE4QjdR2NQVFozQnZMbTlaRUtrQT09>

Meeting ID: 284 869 4212

Passcode: MAGDALENA

CALL TO ORDER: Mayor Rumpf called the Regular Meeting to order at 5:00 pm.

PRESENT: Mayor Richard Rumpf, Trustee Harvan Conrad, Trustee Clark Brown, Carleen Gomez–Deputy Clerk and Juanita Puente–Clerk/Treasurer

PARTICIPATING VIA ZOOM VIDEO CONFERENCE: Trustee- Donna Dawson, Michael Steininger - Village Finance Officer, Trustee James Nelson, Attorney-Randy VanVleck, and Attorney-Cori Strife

ABSENT: NONE

GUESTS : Collier J. Nelson-Assistant Clerk, Carol Brackman, and Cricket Courtney

Mayor Rumpf led the gallery in reciting the Pledge of Allegiance.

APPROVAL OF AGENDA: Clark Brown moved to approve the agenda, and Harvan Conrad seconded the motion. The motion carried unanimously.

APPROVAL OF MINUTES

- a. **REGULAR MEETING – AUGUST 28, 2023:** James Nelson moved to approve the minutes as amended, and Donna Dawson seconded the motion. The motion carried unanimously.

APPROVAL OF CASH BALANCE REPORT: Donna Dawson moved to approve the Cash Balance Report, and Harvan Conrad seconded the motion. The motion carried unanimously.

APPROVAL OF BILLS: Harvan Conrad moved to approve of the bills with additional bills added by Deputy Clerk-Carleen Gomez, and Clark Brown seconded the motion. The motion carried unanimously.

BILL LIST

ADMIN OFFICE OF THE COURTS		\$441.00
GT FABRICATIONS		\$2,870.00
MAGDALENA MUNICIPAL SCHOOL		\$43.98
MAS MODERN MARKETING		\$322.41
MERCHANTS AUTOMOTIVE GROUP		\$372.80
NM MUNICIPAL LEAGUE		\$600.00
PROVELOCITY LLC		\$1,679.50
ROUTE 60 TRADING POST		\$100.00

STADRI INC.		\$258.87
TLC UNIFORMS		\$418.95
VERIZON WIRELESS		\$807.87
WNM COMMUNICATIONS		\$886.23
	SUB-TOTAL:	\$8,801.61
ADDITIONS:		
TROY MECHANICAL		\$1,168.61
MAGDALENA SCHOOLS AUTO SHOP		\$978.85
MAGDALENA SCHOOLS AUTO SHOP		\$623.50
	SUB-TOTAL:	\$2,770.96
	TOTAL:	\$11,572.57

MAYOR'S REPORT: Mayor stated that the Village received the grant for Kelly Road, of \$770,000.00. Mayor Rumpf reported that there would be a Fly-In at the Airport at the end of this week. Also, the Mayor stated that he is going to attend a meeting in Socorro with the DOT committee.

CLERK'S REPORT: Deputy Clerk Carleen Gomez stated that work is being done to prepare for the Auditor's. She stated that the information that has been requested is being pulled together so that all necessary documents can be presented to them when they are here doing their fieldwork. She stated that Juanita Puente is attending a Federal Grant Workshop on the following Monday.

DEPARTMENT REPORTS

- a. **EMS:** EMS Coordinator James Nelson reported that there were four EMS calls in August 2023.
- b. **FIRE:** James Nelson stated that there were 3 or 4 Fire calls in August 2023.
- c. **MARSHAL:** A report was submitted by Marshal Michael Zamora and reviewed by the Mayor and Board of Trustees.
- d. **JUDGE:** Court Clerk Carleen Gomez reported that there was not a report to present but that there would be some cases on Sept. 25th
- e. **PUBLIC WORKS:** No report was presented.
- f. **LIBRARY:** A report was submitted by Librarian Yvonne Magener and reviewed by the Mayor and Board of Trustees.

CASEY CHASE/WESTERN BUCKERS – DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF LODGER'S TAX FUNDING FOR PORTA-POTTIES FOR HIGH COUNTRY CHALLENGE RODEO EVENT: Attorney Randy VanVleck stated that Lodger's Tax funds are for tourist related events, and this would qualify. Harvan Conrad moved to approve the Lodger's Tax Funding for porta-potties for the High-Country Challenge Rodeo Event, and Donna Dawson seconded the motion. The motion carried unanimously.

JIM SAUER/KID'S SCIENCE CAFÉ - DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF LODGER'S TAX FUNDING FOR ANNUAL HWY 60 CAR & QUILT SHOW: Mayor Rumpf stated that this is an event that is growing each year and the Village gets a lot of tourists for these events. Mayor Rumpf stated that they are requesting \$600.00 to cover the advertising expenses. Harvan Conrad moved to approve the request, and Clark Brown seconded the motion. The motion carried unanimously.

DISCUSSION & POSSIBLE DECISION REGARDING QUOTE FROM SIERRA PROPANE FOR HEATING SYSTEM AT MAGDALENA COMMUNITY CENTER: Mayor Rumpf stated that there were a couple of other bids, but this was the lowest one and it is very reasonable coming in between \$10,000.00 and \$13,000.00 and there are Grant monies to pay for the installation of the furnaces. Donna asked if there was going to be any hindrances with A-X Propane, due to them being the company that we use for propane. James Nelson moved to approve the quote from Sierra Propane for a heating system at the Magdalena Community Center, and Harvan Conrad seconded the motion.

Mayor Rumpf requested a Roll Call Vote:

James Nelson: Aye

Harvan Conrad: Aye

Donna Dawson: Aye

Clark Brown: Aye

The motion carried unanimously.

DISCUSSION & POSSIBLE DECISION REGARDING APPROVAL OF APPOINTMENT OF FIRE CHIEF: Donna Dawson stated that she still has a problem with appointing the Mayor as the Fire Chief. She stated that if the Mayor is appointed as the Fire Chief all purchase orders need to come before the Board of Trustees for approval. The Mayor stated that is agreeable and in emergencies, the Board can be emailed. Harvan Conrad moved to approve the appointment of Richard Rumpf as the new Fire Chief, and Clark Brown seconded the motion. The motion carried unanimously.

EXECUTIVE SESSION – THE FOLLOWING MATTERS WILL BE DISCUSSED IN CLOSED SESSION: MOTION & ROLL CALL VOTE TO GO INTO EXECUTIVE SESSION AND THAT, PURSUANT TO NEW MEXICO STATE STATUTES SECTION 10-15-1, ONLY THE FOLLOWING MATTER WILL BE DISCUSSED IN CLOSED SESSION:

Donna Dawson moved to go into Executive Session at 5:15 pm, and Clark Brown seconded the motion.

Mayor Rumpf requested a Roll Call Vote:

James Nelson: Aye

Harvan Conrad: Aye

Donna Dawson: Aye

Clark Brown: Aye

The motion carried unanimously.

a. NMSA 10-15-1(H)(2) LIMITED PERSONNEL MATTERS

i. CLERK/TREASURER

- **MOTION & ROLL CALL VOTE TO RETURN TO REGULAR SESSION**
- **MOTION & ROLL CALL VOTE THAT MATTERS DISCUSSED IN CLOSED SESSION WERE LIMITED TO THOSE SPECIFIED IN MOTION FOR CLOSURE, AND THAT NO FINAL ACTION WAS TAKEN, AS PER NEW MEXICO STATUTES SECTION 10-15-1:**

Donna Dawson moved to return to Regular Session at 5:23 pm and certified that only the matters presented for Executive Session were discussed and no decisions were made, Harvan Conrad seconded the motion.

Mayor Rumpf requested a Roll Call Vote:

James Nelson: Aye

Harvan Conrad: Aye

Donna Dawson: Aye

Clark Brown: Aye

The motion carried unanimously.

DISCUSSION & POSSIBLE DECISION TO HIRE CLERK/TREASURER: Mayor Rumpf presented the name of Juanita Puentes for hire as the new Village Clerk/Treasurer. Donna Dawson moved to approve the new hire of Juanita Puentes as Clerk/Treasurer, and Harvan Conrad seconded the motion.

Mayor requested a Roll Call Vote:

James Nelson: Aye

Harvan Conrad: Aye

Donna Dawson: Aye

Clark Brown: Aye

The motion carried unanimously.

PUBLIC INPUT – 1 TOPIC PER PERSON - 3 MINUTE LIMIT

PUBLIC COMMENT MAY BE MADE IN PERSON OR VIA EMAIL (IF LESS THAN 3 MINUTES). EMAIL COMMENTS MAY BE MADE BY EMAILING COMMENTS TO: clerk@villageofmagdalena.com and/or mayor@villageofmagdalena.com THE DEADLINE FOR WRITTEN PUBLIC COMMENTS TO BE RECEIVED IS MONDAY, SEPTEMBER 11, 2023, AT 12:00 PM. EMAILED PUBLIC COMMENT MUST CONTAIN THE AUTHOR'S NAME AND PHYSICAL ADDRESS AND WILL BE ENTERED AND/OR READ INTO THE MEETING MINUTES:

No public input was given.

ADJOURNMENT: Donna Dawson moved to adjourn the meeting at 5:25 pm, and Clark Brown seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Carleen Gomez, CMC
Deputy Clerk

Richard Rumpf
Mayor

Minutes taken by:

Collier Nelson
Assistant Clerk



September 8, 2023

Richard Rumpf, Mayor
Village of Magdalena
P.O. Box 145
Magdalena, New Mexico 87825

Dear Richard Rumpf:

We are pleased to inform you that your application for the Transportation Project Fund (TPF) for the project: **Kelly Road Construction Management, Resurfacing (Chip Seal), Kelly Road from US-60 to Hop Canyon Road** was approved by the State Transportation Commission on August 24, 2023 and will be included in the New Mexico Department of Transportation's FY24 TPF Program.

The total estimated cost for your project is \$775,000.00 the Department has allocated \$736,250.00 in TPF funds, with a local match requirement of \$38,750.00.

The Project Oversight Division will develop a project agreement and forward to you for signature.

If your application indicated that you would be interested in applying for Match Waiver funds, please submit a cover letter and resolution to my office no later than 5:00 pm on September 30, 2023.

If you have any questions or comments, please contact me at (505) 699-9946 or Clarissa.Martinez@dot.nm.gov.

Sincerely,

Clarissa Martinez
Project Oversight Division, State Grants Manager

C: Gil Gallosa, District Coordinator
Aaron Chavarria, P.E., District
Engineer

**Michelle Lujan
Grisham**
Governor

Ricky Serna
Cabinet Secretary

Commissioners

Jennifer Sandoval
Commissioner, Vice-Chairman
District 1

Gary Tonjes
Commissioner
District 2

Hilma E. Chynoweth
Commissioner
District 3

Walter G. Adams
Commissioner, Chairman
District 4

Thomas C. Taylor
Commissioner
District 5

Charles Lundstrom
Commissioner, Secretary
District 6

This rule was filed as: 18 NMAC 27.3.

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 27 HIGHWAY CONSTRUCTION GENERAL PROVISIONS
PART 3 LOCAL GOVERNMENT ROAD FUND GUIDELINES FOR WAIVER OF LOCAL ENTITIES
MATCHING FUNDS DUE TO FINANCIAL HARDSHIP

18.27.3.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department
Post Office Box 1149 Santa Fe, New Mexico 87504-1149 (505) 827-5498
[11/30/98; 18.27.3.1 NMAC – Rn, 18 NMAC 27.3.1, Recompiled 11/16/01]

18.27.3.2 SCOPE: This rule covers all Counties, Municipalities or entities experiencing financial hardship.
[11/30/98; 18.27.3.2 NMAC – Rn, 18 NMAC 27.3.2, Recompiled 11/16/01]

18.27.3.3 STATUTORY AUTHORITY: NMSA 1978, Section 67-3-11, 67-3-28 and 67-3-28.2.
[11/30/98; 18.27.3.3 NMAC – Rn, 18 NMAC 27.3.3, Recompiled 11/16/01]

18.27.3.4 DURATION: Permanent.
[11/30/98; 18.27.3.4 NMAC – Rn, 18 NMAC 27.3.4, Recompiled 11/16/01]

18.27.3.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section or
paragraph.
[11/30/98; 18.27.3.5 NMAC – Rn, 18 NMAC 27.3.5, Recompiled 11/16/01]

18.27.3.6 OBJECTIVE: The New Mexico Legislature occasionally provides a certain amount of Local
Government Road Funds to be used by the State Highway and Transportation Department in place of normally required
Local Government Matching Funds for Cooperatives, School Bus Routes, Municipal Arterial or County Arterial Projects,
in any given fiscal year, in the event of financial hardship by an eligible entity as determined by the Secretary of the State
Highway and Transportation Department and as authorized by the State Highway Commission.
[11/30/98; 18.27.3.6 NMAC – Rn, 18 NMAC 27.3.6, Recompiled 11/16/01]

18.27.3.7 DEFINITIONS:
A. "Commission" means State Highway Commission.
B. "Department" means New Mexico State Highway and Transportation Department.
C. "DFA" means Department of Finance & Administration.
D. "LGRF" means Local Government Road Fund.
E. "Secretary" means Cabinet Secretary of the New Mexico State Highway and Transportation Department.
[11/30/98; 18.27.3.7 NMAC – Rn, 18 NMAC 27.3.7, Recompiled 11/16/01]

18.27.3.8 GUIDELINES: The following guidelines are established for administration of funds authorized by the
legislature.

A. Only entities which submitted requests for Cooperative, School Bus Routes, Municipal Arterial, or
County Arterial projects from the Local Government Road Fund Program by the deadline specified by the District
Engineer shall be eligible for waivers.

B. Entities eligible for participation in the LGRF Program may request a waiver of their matching share in
whole or in part due to financial hardship. All project requests including all waiver requests with supporting
documentation shall be submitted to the District Engineer or designee for their respective areas.

C. Waiver of matching funds shall not be considered if an entity already has a project under agreement
using current fiscal year funding. Matching funds will not be waived for more than one project per entity, except for
counties which would be eligible for one cooperative project and one county arterial project.

D. A waiver must be requested and determination made before a Cooperative Project Agreement has been
signed with the Department. The Secretary may waive this provision when it is in the best interest of the State to do so.

E. If an entity wants to establish a financial hardship, it should submit a resolution or certification
indicating that it cannot match all or a portion of its share. The resolution or certification shall be signed by the appropriate
official(s).

F. After receiving a resolution or certification declaring financial hardship, the District Engineer shall consider all known facts such as severe winter weather, flooding, emergency work, past history, whether the entity has exhausted taxing authority, and other information that would tend to prove financial hardship.

G. The District Engineer shall request from the Local Government Division of the DFA, or State Board of Education, a financial analysis and recommendation on an entity's financial hardship for the fiscal year in which the waiver is requested.

H. If financial hardship is evident the District Engineer shall submit the entity's request and resolution or certification along with recommendation that the waiver of matching funds be granted. If financial hardship is not evident, the District Engineer shall so notify the entity in writing.

I. If financial hardship has been determined and the entity is not providing matching funds, the maximum amount the entity can receive from the LGRF in any fiscal year is \$75,000, except for County Arterial Projects where the maximum shall be the county's share mandated by legislative formula, plus the standard 25% match. This maximum amount may be waived depending on the demand on the funds which are available.

J. The Secretary shall review the District Engineer's recommendation and recommend action to the Commission. The Commission shall take action on the Secretary's recommendation at a regularly scheduled Commission meeting.

K. The District Engineer shall be notified of the Commission's action by the Secretary and in turn shall notify the entity.

L. If the Commission approves the recommended action, a Cooperative Agreement shall be accordingly entered into.

M. The State Maintenance Bureau shall be responsible for accounting and totaling the funds being expended out of the funds provided for financial hardships.

N. For Municipal Arterial Projects, the State Maintenance Engineer shall be substituted and take the place of the District Engineer in these guidelines.

O. Any agreement involving waiver of an entity's fiscal year matching funds shall be processed prior to December 31, of that fiscal year, or as otherwise determined by the Secretary.

P. If a public entity is not using maximum tax levy authority, the entity shall provide a written explanation of why the maximum tax levy is not being imposed prior to the Department considering the waiver request.
[11/30/98; 18.27.3.8 NMAC – Rn, 18 NMAC 27.3.8, Recompiled 11/16/01]

HISTORY OF 18.27.3 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records and Archives under: SHTD Rule No. 93-3, Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship - 82nd FY, filed June 7, 1993; SHTD Rule No. 93-3, Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship - 82nd FY filed October 4, 1993; SHTD Rule No. 93-3, Amendment 1, Amendment to the Local Government Road fund Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship filed September 23, 1994; SHTD Rule No. 93-3, Local Government Road fund Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship filed February 2, 1995; and SHTD Rule No. 93-3, Amendment 1, Amendment to the Local Government Road fund Guidelines for Waiver of Local Entities Matching Funds Due to Financial Hardship filed November 3, 1995.

History of repealed Material: [RESERVED]



108 N. MAIN STREET
P.O. BOX 145
MAGDALENA, NM 87825
PH: (575) 854-2261
FAX: (575) 854-2273
www.villageofmagdalena.com

Mr. Aaron Chavarria, P.E.
NMDOT District One Engineer
C/O Gil Gallosa, LGRF Coordinator
2912 E. Pine St.
Deming, NM 88030

September 25, 2023

Re: Request for TPF Hardship Match Waiver
Control Number: LP10062
Scope of Work: Resurfacing (Chip Seal) Kelly Road from US-60 to Hop Canyon Road
Total Amount \$775,000.00
Entity Share \$38,750.00
State Share \$736,250.00

Dear Mr. Chavarria,

The Village of Magdalena is interested in applying for the TPF Hardship Match Waiver per the NM Administrative Code 18 NMAC 27.3.8 for our pending funding through the **FY 2024** TPF program.

NMAC 27.3.8 allows Public Entities who are experiencing financial hardship to apply for a Match Waiver of all or part of the Public Entity match normally required for participation in the Transportation Project Fund.

The Village of Magdalena qualifies for the Match Waiver because **(explain the reasons why the Entity would qualify for the hardship waiver)**

The Village of Magdalena requests a Match Waiver in the amount of \$38,750.00 for the TPF Project for year 2023 - 2024 to Resurface (chip seal), Kelly Road from US-60 to Hop Canyon Road within the control of the Village of Magdalena in Magdalena/Socorro County, New Mexico.

Sincerely,

Richard Rumpf, Mayor
Village of Magdalena



RESOLUTION NO. 2023-20

VILLAGE OF MAGDALENA

PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM AND REQUEST FOR MATCH WAIVER
ADMINISTERED
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the VILLAGE OF MAGDALENA and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be \$775,000.00 to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 95% or \$736,250.00.

and

b. The VILLAGE OF MAGDALENA'S proportional matching share shall be 5% or \$38,750.00 if Hardship for Match Waiver is not deemed to be present by Department of Finance and Administration and the Department of Transportation

TOTAL PROJECT COST IS \$775,000.00

The VILLAGE OF MAGDALENA shall pay all costs, which exceed the total amount of \$775,000.00.

WHEREAS, the VILLAGE OF MAGDALENA has a limited tax base, which limits the funding for meeting the proportional matching share; and, a fund exists in the NMDOT appropriated by the New Mexico State Legislature for Public Entities in need of "hardship" match money and the VILLAGE OF MAGDALENA requests participation in this Match Waiver Program in the amount of \$38,750.00.

Now therefore, be it resolved in official session that VILLAGE OF MAGDALENA determines, resolves, and orders as follows:

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

The agreement terminates on June 30, 2026, and the VILLAGE OF MAGDALENA incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the VILLAGE OF MAGDALENA to enter into Cooperative Agreement Control Number LP10062 with the New Mexico Department of Transportation for TPF Project for year 2024 for KELLY ROAD CONSTRUCTION, RESURFACING (CHIP SEAL), KELLY ROAD FROM US-60 TO HOP CANYON ROAD within the control of the VILLAGE OF MAGDALENA in MAGDALENA IN SOCORRO COUNTY, New Mexico.

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

HARVAN CONRAD, TRUSTEE

DATE

JAMES NELSON, TRUSTEE

DATE

DONNA DAWSON, TRUSTEE

DATE

CLARK BROWN, TRUSTEE

DATE

RICHARD RUMPF, MAYOR

ATTEST:

JUANITA PUENTE, CLERK/TREASURER

**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **VILLAGE OF MAGDALENA**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 463**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

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

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

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

- 23-H3217
- APPROPRIATION AMOUNT: \$150,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 463
- ONE HUNDRED FIFTY THOUSAND (\$150,000.00),
- to plan, design, construct, replace, renovate and equip improvements, including electrical systems, water systems and safety lighting, at the rodeo grounds in Magdalena in Socorro county;

The Grantee's total reimbursements shall not exceed ONE HUNDRED FIFTY THOUSAND \$150,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO \$0.00, which equals ONE HUNDRED FIFTY THOUSAND \$150,000.00 (the "Adjusted Appropriation Amount").

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

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

- A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:
- i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
 - ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
 - iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
 - iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
 - v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.
- Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
 - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

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

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

Grantee: VILLAGE OF MAGDALENA
Name: Richard Rumpf
Title: Mayor
Address: PO Box 145, Magdalena, NM 87825
Email: mayor@villageofmagdalena.com
Telephone: 575-854-2261

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

Grantee: VILLAGE OF MAGDALENA
Name: Carleen Gomez
Title: Deputy Clerk
Address: PO Box 145, Magdalena, NM 87825
Email: cgomez@villageofmagdalena.com
Telephone: 575-854-2261

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

Department: DFA/Local Government Division
Name: Alison Gillette
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: Alison.Gillette@dfa.nm.gov
Telephone: 505-469-7811

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

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

- A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
- B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

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

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

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

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

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

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

- A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
- i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
 - ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
 - iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

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

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

D. Corrective Action Plan in the Event of Suspension

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

ARTICLE VII. AMENDMENT

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

ARTICLE VIII. REPORTS

A. Reporting

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

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

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

- i. request such additional information regarding the Project as it deems necessary; and
- ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

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

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

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

C. Deadlines

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

- i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- ii. Twenty (20) days from date of Early Termination; or
- iii. Twenty (20) days from the Reversion Date.

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

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

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

B. The Grantee hereby represents and warrants the following:

- i. The Grantee has the legal authority to receive and expend the Project's funds.
- ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

- A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

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

ARTICLE XIII. LIABILITY

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

ARTICLE XIV. SCOPE OF AGREEMENT

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

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

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

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **VILLAGE OF MAGDALENA** may immediately terminate this Agreement by giving Contractor written notice of such termination. **VILLAGE OF MAGDALENA's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **VILLAGE OF MAGDALENA** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **VILLAGE OF MAGDALENA** or the Department"

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

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

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the VILLAGE OF MAGDALENA may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the VILLAGE OF MAGDALENA only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

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

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

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

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

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

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

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

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

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

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE

Signature of Official with Authority to Bind Grantee

Entity Name

By: _____
(Type or Print Name)

Its: _____
(Type or Print Title)

Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

By:

Its: Division Director

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
 B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
 C. Contact Name/Phone #: _____
 D. Grant No: _____
 E. Project Title: _____
 F. Grant Expiration Date: _____

II. Payment Computation

- A. Payment Request No. _____
 B. Grant Amount: _____
 C. AIPP Amount (If Applicable): _____
 D. Funds Requested to Date: _____
 E. Amount Requested this Payment: _____
 F. Reversion Amount (If Applicable): _____
 G. Grant Balance: _____
 H. GF GOB STB (attach wire if first draw)
 I. Final Request for Payment (if Applicable)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. Reporting Certification: I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. Compliance Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
 or **Fiscal Agent** (if applicable)

Grantee Representative

 Printed Name

 Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loc No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

 Division Fiscal Officer

 Date

 Division Project Manager

 Date

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

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

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

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

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

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

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