

Timothy M. Keller
State Auditor



Sanjay Bhakta, CPA, CGFM, CFE, CGMA
Deputy State Auditor

State of New Mexico
OFFICE OF THE STATE AUDITOR

August 23, 2016

Rick Rudometkin, County Manager
Eddy County Commissioners
101 W. Green
Carlsbad, NM 88220

Dear Mr. Rudometkin and Commissioners:

In April of 2015, Eddy County (County) contracted for forensic consulting services to assist the County in reviewing expenditures of the Fire Excise and State Fire Funds for the period July 1, 2009 through June 30, 2014.

The County Fire Protection Excise Tax, enacted pursuant to New Mexico Statutes Section 7-20E-15, is a [one-fourth or one-eighth] tax imposed on any person engaging in business in the county area. The statutes are clear that proceeds of this tax must be dedicated "for the purpose of financing the operational expenses, ambulance services or capital outlay costs of independent fire districts or ambulance services provided by the county." The Public Regulation Commission allocates State Fire Fund monies, which are limited in use to purchases of apparatus, equipment, appliances, and supplies etc., which are directly in relation to the performance of a county's emergency services.

The Forensic Consulting Report, which was released by the Office of the State Auditor (OSA) on August 19, 2016, noted a broad range of issues concerning internal controls with respect to Fire Excise and State Fire Funds. Additionally the report found:

- The County did not always comply with local ordinances and state statutes that restrict the use of Fire Excise Funds, with the report citing over \$655,000 in questioned costs for fire equipment purchased for other municipalities.
- Compliance with state procurement code was not evident due to a lack of supporting documentation for large purchases, of at least \$ 6,016,950, using Fire Excise Funds.
- Related party transactions, regarding vehicle repairs and training activities using both Fire Excise Funds and State Fire Funds were poorly monitored and documented.
- Capital asset and sensitive equipment was inadequately tracked, including over \$3 million in capital assets that were not included in the County's capital assets register.

The report also notes concerns of current and former employees regarding procurement, contracts and transparency that merit consideration and evaluation by County management.

Management responses to audit findings should generally acknowledge the problems presented and cite corrective actions moving forward. The Eddy County responses to this report acknowledge the findings and offer some solutions to prevent continued non-compliance with laws

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and policies, however some of the responses regarding non-compliance suggest that the exceptions are acceptable. Accordingly, this office, and the citizens of Eddy County, have reason to be concerned about these serious issues perpetuating.

We bring these matters to your attention in order to call on management to remedy these issues promptly as part of its fundamental responsibility to design, implement, maintain and monitor appropriate internal controls and to promptly take corrective action when deficiencies are identified. Internal controls are critical to the County's mission to provide services while ensuring accountability for taxpayer dollars and compliance with all applicable laws, regulations, and standards. Moving forward, as part of the annual audit process, the OSA will require the County's annual financial auditor to test internal controls and expenditures related to Fire Excise and State Fire Funds. Failure to address these issues may result in impaired county financing and trigger freezes of certain funding.

Please do not hesitate to contact me at (505) 476-3800 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Timothy M. Keller". The signature is written in black ink and includes a horizontal line extending to the right from the end of the name.

Timothy M. Keller
State Auditor



**EDDY COUNTY – FIRE EXCISE AND
STATE FIRE FUNDS**

FORENSIC CONSULTING REPORT

July 19, 2016

MOSS-ADAMS_{LLP}

Certified Public Accountants | Business Consultants

July 19, 2016

Rick Rudometkin
County Manager
101 W. Greene
Carlsbad, NM 88220

Subject: Forensic Consulting Services

Dear Rick:

Thank you for the opportunity to provide forensic consulting services to Eddy County (the "County") regarding activities of the Fire Excise and State Fire Funds (the "Funds"). This report summarizes our forensic consulting procedures, findings, and recommendations as it relates to our assistance with your evaluation of the Funds' activities for the period from July 1, 2009 through June 30, 2014.

This engagement was performed in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants as outlined in our contract (Agreement A-15-32) dated April 2015. The scope of this engagement is outlined in the body of our report. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

County management is responsible for maintaining the accounting records and for establishing and maintaining effective internal control over compliance with applicable laws, regulations, and procurement policies of the County. We were not engaged to, and did not conduct an audit or examination, the objective of which would be the expression of an opinion on the internal controls, or activities of the Funds under attestation standards. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. In addition, our consulting procedures do not provide legal determination of the County's compliance with applicable laws and regulations.

Rick Rudometkin
County Manager
July 19, 2016

This report was developed based on information obtained from our interviews with current employees and volunteers of the County, our observations of the Funds' operations, and review of selected supporting documentation and records.

This report is intended solely for the use of the County's management, commissioners, and their designated legal counsel and the New Mexico Office of the State Auditor. This report should not be disclosed to, used or relied upon by any other third-party. Moss Adams LLP does not accept any responsibility to any other party to whom this report may be shown or into whose hands it may come.

We appreciate the opportunity to help you with this matter. Please do not hesitate to call me at (505) 878-7200 if you have any questions or need further assistance regarding this important matter. Moss Adams would like to sincerely thank the staff and volunteers of the County for their help in assisting us with our procedures.

Sincerely,

A handwritten signature in black ink, appearing to read "James Thompson", with a long horizontal flourish extending to the right.

James Thompson, Partner for
Moss Adams LLP
Albuquerque, New Mexico

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EXECUTIVE SUMMARY

The County management and its Commission are responsible for providing County members reasonable assurance that funds are properly accounted for, and that the County has an adequate system of internal accounting and operational controls necessary to meet these responsibilities. The procedures performed in this report were developed by the County to assist the County in reviewing expenditure activities of the Fire Excise and State Fire Funds for the period July 1, 2009 through June 30, 2014.

We conducted interviews, obtained financial accounting records and other documents relative to the consulting procedures we were engaged to perform. Based on our review of the supporting documentation and the procedures we performed, we noted the following issues:

- Internal controls over the expenditures of Fire Excise and State Fire Funds were not consistently applied to ensure proper segregation of duties, transactional authorization, adequate documentation of records, physical control of assets and records and independent checks of performance;
- Expenditures were made using Fire Excise Funds that were not in compliance with local ordinances (O-04-47, O-95-25) or New Mexico Statute (Section 7-20E-1 through 7-20E-28 NMSA 1978) that limit expenditures for the purpose of financing the operational expenses, ambulance services or capital outlay costs of independent fire districts or ambulance services provided by the County.
- Purchases of equipment above \$5,000 were not consistently or accurately recorded in the fixed asset system. Additionally, sensitive equipment like radios were not inventoried or tracked to the individuals to who they were assigned to.
- The County lacks a system to properly track and monitor volunteer workers and to ensure that all volunteer Public Employees Retirement Association of New Mexico (PERA) eligibility forms are complete and accurate.
- Large purchases were not properly bid or were not supported by state-wide purchasing agreements.
- Lack of controls over monitoring of related party activities.

Below is the summary of the questioned costs noted in this report:

<u>Description</u>	<u>Amount</u>
Capital outlay for the benefit of other municipalities	\$ 655,237
Procurement of advanced radio and microwave communication system	4,455,194
Procurement of MOSCAD	506,584
Motorola service and maintenance agreements	1,055,172
Emergency purchase of air packs	99,984
Procurement of mechanical services	204,950
Procurement through a related party	284,693
Total questioned costs	<u>\$ 7,261,814</u>

This report contains our observations and recommendations to further assist the County in evaluating concerns of mismanagement and abuse that have been reported regarding Fire Excise and State Fire Funds. Our procedures were limited to the areas and periods described in the objective and scope section of this report, documents available, and interviews performed. Had we reviewed other periods or areas or documents, other matters may have been identified warranting the County's attention.

OBJECTIVE AND SCOPE

The procedures listed below were developed by the County to assist the County in assessing the fraud risk and internal controls of the County over expenditures of the Fire Excise and State Fire Funds.

PROCEDURES PERFORMED

This section describes the procedures performed to accomplish the objectives of the forensic consulting procedures as specified in our Contract. Moss Adams performed the following forensic consulting services relative to the Fire Excise and State Fire Funds relative to the five year period from July 1, 2009 through June 30, 2014:

- 1. Conduct up to five meetings with County Officials to include Fire Service, Volunteer Fire Department Officials, Finance and Administrative Staff as designated by the County;**

We conducted meetings, including interviews, with current and former employees and volunteers to discuss concerns relative to the use of Fire Excise and State Fire Funds. Key concerns communicated during those meetings have been documented below in procedure 2.

- 2. Conduct up to five meetings with Volunteer Fire Department Fire Chiefs, Assistant Fire Chiefs, or their designees and employees;**

We conducted meetings, including interviews, with current and former fire chiefs, assistant chiefs, their designees and other employees to discuss concerns relative to the use of Fire Excise and State Fire Funds. Key concerns communicated during those meetings during procedure 1 and 2, are documented below:

- Significant funding was used on radio communication towers and equipment that Volunteer Fire Department (VFD) chiefs may not have fully approved of;
- Fire Excise Funds may have been spent on equipment for local municipalities or for other county departments and not for the exclusive benefit of County VFDs and ambulance services;
- Prior administration controlled all spending, lacked transparency and created an environment making it difficult to determine that all funds were properly expended;
- Controls over inventory and equipment were lacking and some equipment may have been stolen, never delivered to proper VFD or used for personal use;
- Potential for kickbacks on large contracts;
- In 2008, food may have been charged to a VFD by Administration and when discovered the cost was removed and charged elsewhere;
- A VFD chief was terminated a few years back because of concerns over fuel charges, the County conducted an investigation of the matter;

- Radios were purchased for VFDs then shortly thereafter were taken back and replaced, concerned that radios were not properly accounted for or charged to VFDs;
- Dive equipment may have been purchased then went unaccounted for then returned again; and
- Concern over training center expenses involving related parties.

Our testing relative to the above concerns was limited to the procedures included in this report and documents provided by the County. We were not provided with any third party evidence from the interviewees relative to these concerns. The County should consider if the concerns raised in regards to kickbacks on large contracts should be further investigated. Additionally, although we did not perform additional procedures relative to the fuel charges concern we provided data on fleet fuel by location at Exhibit IV to assist the County in evaluating this concern.

3. Review all applicable State Laws regarding the expenditure of Fire Excise and State Fire Funds and discuss with the County as well as the Volunteer Fire Department Fire Chief's those that they agree are significant to the performance of the forensic consulting procedures;

We reviewed applicable state procurement laws relative to general procurement and those specific to Fire Excise and State Fire Funds, and interviewed the State of New Mexico Fire Marshal, County's Fire Marshals, Finance Director and few Volunteer Fire Department Fire Chiefs.

The following are deemed most relevant to our procedures:

- Article 53 Fire Protection Fund Section 59A-153-1 through 59A-53-19 NMSA 1978
- NM State Fire Marshal Fire Protection Fund Administrative Code
- Eddy County Fire Protection Excise Tax Ordinance Number 0-95-25 and 0-04-47
- Policy of Authorized Fire Fund Expenditures, New Mexico State Fire Marshal Division
- New Mexico State Procurement Statutes Section 13
- NMAC State Procurement Code Title 1 Chapter 4
- Governmental Conduct Act (NMSA 1978 Section 10-16-7)

4. Obtain copies and review all resolutions, policies and procedures regarding the expenditure of County Fire Excise and State Fire Funds and discuss with the County as well as the Volunteer Fire Chiefs those that they agree are significant to the performance of the forensic consulting procedures;

We obtained and reviewed copies of significant resolutions, policies and procedures regarding expenditures of County Fire Excise and State Fire funds, and interviewed the State of New Mexico Fire Marshal, County's Fire Marshals, Finance Director and few Volunteer Fire Department Fire Chiefs.

The following are deemed most relevant to our procedures: Purchasing, Fixed Asset, P-Card, and Travel policies.

- 5. Conduct forensic consulting procedures to assess fraud risks and questioned costs of Eddy County Fire Service's Fire Excise monies and all State Fire Fund monies for the period July 1, 2009 through June 30, 2014, when such records exist. The forensic consulting procedures will include performing interviews and performing sample testing of at least 2% of the transactions over the scope period as well as data analytics and variation analysis.**

During the consulting, Contractor will stay engaged with all stakeholders, including but not limited to, Fire Chiefs, Assistant Fire Chiefs, Finance Department personnel, personnel for the Fire Service Office and Administrators for the County, to ensure as much transparency of the process as is reasonable; contractor will target the testing samples to those areas that are brought to their attention by stakeholders first, and then fulfill at least the minimum transactions through random or computer targeted sampling.

We performed random sampling selection of expenditures from Fire Excise and State Fire Funds with focused testing on areas that were identified as significant concerns during our meetings and interviews. We selected a total of 103 items or 2% of all checks issued (no payroll is paid through the excise or fire funds) for testing, covering 46% of the total dollars disbursed from July 1, 2009 through June 30, 2014. We noted that the disbursements download of expenditures provided to us was \$475,870.61 higher than amounts reported in the County's annual audit reports. Differences may be largely due to journal entries booked to arrive at modified accrual basis in the general ledger. The County, however, can't provide reconciliation of the noted difference. We sorted expenditures and summarized the top ten vendors for the County Excise and Fire funds at Exhibits I and II.

We also performed Benford's analysis for checks and P-Cards disbursements. P-Cards disbursements leading digits are consistent with normal distributions; however, transaction digits starting with 5's and 8's for checks disbursements are unusually high compared to normal distributions. We randomly picked 30 samples (included in the total samples of 103 items) for these transactions and noted that some (except as noted as exceptions) relate to allocations of common costs to all the Fire Departments.

Throughout the engagement, we informed County personnel of issues and interviewee concerns as they arose.

6. Develop a detailed report to include:

- a. Needed improvements;**
- b. Details of any misspending or misappropriation (questioned costs);**
- c. Findings of compliance or non-compliance with State or Eddy County statutes, resolutions, policies and procedures;**
- d. Recommendation for additional procedures, if required.**

We prepared a draft of our report to the County for review and comment prior to issuing our final report.

7. **After the State Auditor’s office has authorized the release of the forensic consulting report, present the final report and findings to the Board of County Commissioners (BOCC), at regularly scheduled public meetings and conduct an open meeting(s) to present the final report and related findings.**

A final exit meeting will be scheduled subsequent to the official issuance of this report.

FINDINGS AND RECOMMENDATIONS

Our procedures identified the following Findings as areas for improvement:

Use of Fire Excise Funds

1. We noted the following disbursements paid on behalf or for the benefit of other municipalities that do not appear to solely benefit the County or be a capital outlay costs of the independent fire districts services provided by the County:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
7/1/2008	Rosenbauer Fire Truck for City of Artesia	\$ 282,533
11/13/2008	Rescue Truck for City of Carlsbad	167,094
7/6/2010	Reimbursement – Village of Loving	23,650
8/3/2013	Village of Loving	47,315
2/2/2010	Construction payment for Village of Loving Fire Station	<u>134,645</u>
	Questioned Costs	<u>\$ 655,237</u>

We also noted that the above disbursements were not approved by the County Commission as noted in the review of the minutes.

2. In 2006 and 2007, the County considered the purchase of an advanced radio and microwave communication system with an initial estimated cost of \$4,455,194 which was initially proposed to be funded by a NMFA loan pledged by Fire Excise Funds. Documentation provided in Exhibit V notes that the Sheriff’s Office radio system was in need of replacement and does not mention a need for the independent volunteer fire district or ambulance services. NMFA funding was not obtained; loan from General Fund was later used to finance the acquisition of the system. In the County’s September 21, 2010 minutes, the County Commission authorized the loan repayment to the General Fund from the Fire Excise Fund of \$2 million, noting \$600,000 was repaid prior to July 1, 2010 leaving a balance due of \$1.4 million payable at a rate of not less than \$300,000 per year.
 - a. No bid file or statewide purchasing agreement was maintained at the County to

determine if the procurement was done in accordance with NMSA purchasing statutes for the initial purchase of \$4,455,194. Two vendors were used for the project with \$866,865 designated for Tower Construction and \$3,588,329 designated for Motorola. Note that the expenditures related to the Tower Construction is prior to our period of scope, hence no procedures were performed on those expenditures.

- b. The procurement files provided noted that the purchase of Motorola Supervisory Control and Data Acquisition System (MOSCAD) for \$506,584 was approved by the County Commission in September 2012 under the statewide purchasing agreement 90-000-00-00027. In reviewing the statewide purchasing agreement we were unable to identify the products and labor services provided based on the Motorola invoice to the descriptions of products and services available in the statewide purchasing agreement. The pricing summary showed the equipment of \$205,531, services of \$281,358 and tax of \$19,695, for a total of \$506,584.
 - c. From December 2008 to June 2014, the County expended \$604,034 for service and maintenance agreements and an additional \$451,138 for equipment and repairs relative to the advanced radio and microwave communication system and MOSCAD. No bid file or statewide purchasing agreement was maintained at the County to determine if the procurement was done in accordance with NMSA purchasing statutes.
 - d. Milestone payments of \$727,384 and \$947,713 on November 25, 2008 and February 24, 2009, respectively, were made using P-Cards (Joel Arnwine) and without additional approvals despite the significance of the amount. While the state statutes allows governmental agencies to implement a procurement card project, it is the intention to use P-Cards normally for small purchases due to internal control issues associated with it such as lack of approval and oversight.
3. We noted a disbursement for Roadrunner Environmental which was shown as \$8,750 per general ledger. However, supporting documents (check copy and invoice) show that the actual amount was \$288. The County could not provide explanation or additional documentation for this issue.

State Fire Funds

1. We noted purchase of 24 air packs for \$99,984 using the emergency purchase provision of NMSA 1978 Section 13-1-127 (emergency procurement). The Commission approved the purchase on April 4, 2010; however, delivery was not made until May 5, 2010. The County has no documentation as to the justification of the procurement method and whether emergency conditions arose in accordance with NMSA 1978 Section 13-1-127. Under the statutes, an emergency condition is a situation that creates a threat to public health, welfare or safety such

as may arise by reason of floods, fire epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response.

2. The County could not provide us equipment inventory for selected fire districts nor does the County have any evidence that a physical inventory was performed. In accordance with State Fire Marshal rules (10.2510.18 NMAC), all fire departments shall maintain an equipment inventory list. All single items purchased with State Fire Funds costing two hundred and fifty dollars or more shall be listed on the fire department's inventory list. A physical inventory of such items shall be conducted no less than annually.

Applicable to both Fire Excise and State Fire Funds

1. Procurement of mechanical services amounted to \$204,950 (\$151,107 and \$53,843 from State Fire Fund and Fire Excise Fund, respectively) from April 2012 through June 30, 2014. The mechanical contractor is also volunteer firefighter for Atoka Fire Department and the son of the Atoka Fire Chief. We noted the following issues:
 - The County did not follow the standard competitive bidding process under the procurement code considering the payment exceeded the procurement limit of \$50,000 (\$60,000 starting FY2014).
 - On November 1, 1983, the New Mexico Attorney General issued an opinion that volunteer firefighters are considered "employees" within the meaning of NM Occupational Health and Safety Act (OSHA) due to the following reasons: (a) volunteers are eligible to receive compensation for their services from state funds in the form of retirement benefits, insurance coverage and other miscellaneous compensation; (b) volunteers work under the immediate control of the local fire protection body; they are not independent contractors. The objective of OSHA is to protect worker health and safety. Using this opinion, the mechanical contractor may be considered as an "employee" under the definition provided by NMSA 1978 Section 13-1-54. Additionally, we noted the County issued a P-Card to him (being an Assistant Chief of Atoka) that he can use for authorized acquisitions, a privilege that can only be granted to an employee. Considering this, the provisions of NMSA 1978 Section 13-1-190 (Unlawful employee participation prohibited) may have been violated.
 - One review of an invoice dated August 21, 2012 in the amount of \$17,481 (related to a truck maintenance), noted the following: (a) credit card fee of \$672 (4% of the invoice amount) was charged in violation of the state statutes, (b) there is no purchase order approving the number or hours or the hourly rate of \$85, (c) total hours of 187 hours was charged noting no approval of those hours and hours were not broken out by date. We noted in the subsequent invoices that the hourly rate went up to \$100.
 - Unusually high expenditures for Atoka and Joel fire departments, in the amount of \$44,623 and \$39,399, respectively. These two locations accounted 41% of the total payment to the mechanical contractor (see Exhibit III).

2. Payments for fleet fuel from 2009 through 2014 amounted to \$298,156 (\$286,394 and \$11,762 from State Fire Fund and Fire Excise Fund, respectively). We noted that consumption by Joel Fire Department is unusually high compared to other fire departments (see Exhibit IV).
3. We noted the following capital expenditures were not included in the County's capital assets register:

<u>Source</u>	<u>Payment Type</u>	<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Amount</u>
Excise	Check	9/21/2010	AG SERVICES CONSTRUCTION INC	Malaga Water System Improvement	\$ 55,000.00
Excise	Check	10/2/2012	MOTOROLA SOLUTIONS	MOSCAD ALRM&CONTRL PER NM911 CON	301,052.60
Excise	Check	7/1/2008	ARTESIA FIRE EQUIPMENT INC	FIRE TRUCK FOR CITY OF ARTESIA	282,532.84
Excise	Check	4/3/2012	MOTOROLA SOLUTIONS	MOSCAD ALRM&CONTRL PER NM911 CON	205,531.40
Excise	Check	11/13/2008	FIRST IN INC	RESCUE TRUCK - CITY OF CARLSBAD	167,094.00
Excise	Check	6/6/2012	EDDY COUNTY	SUN CTRY BRUSH TRUCK GRANT	100,000.00
Excise	P-Card	2/24/2009	MOTOROLA INC	milestone payment	947,713.02
Excise	P-Card	11/25/2008	MOTOROLA INC	Milestone payment 2nd to last	727,383.70
Excise	P-Card	4/27/2009	MOTOROLA INC	FINAL Payment Simulcast network	202,339.81
Excise	Check	2/2/2010	VILLAGE OF LOVING	LOVING FIRE STN CERT #5	134,644.99
Fire Fund	Check	5/18/2010	ARTESIA FIRE EQUIPMENT INC	SURVIV-AIR AIR PACKS JOEL VFD	99,984.00
Fire Fund	Check	10/7/2008	ARTESIA FIRE EQUIPMENT INC	4 SCBA UNITS WITH ACCESSORIES	13,084.00
Fire Fund	Check	12/21/2010	ARTESIA FIRE EQUIPMENT INC	5 SCBA UNITS FOR HAPPY VAL VFD	27,395.00
Fire Fund	Check	2/2/2011	ARTESIA FIRE EQUIPMENT INC	4 SCBA UNITS FOR JOEL VFD	19,564.00
Total					\$3,283,319.36

As such, we could not determine if they were authorized by the County nor does it appear that appropriate procurement procedures were followed for those significant purchases.

4. Our review of selected travel expenses revealed one travel expenditure dated 4/22/2011 in the amount of \$818.40 (airfare roundtrip from Roswell, NM to Indianapolis) that does not have supporting travel authorizations as required by the County's travel policies.
5. Disbursements to Permian Basin Regional Training Center, Inc. amounted to \$284,693 (\$278,848 and \$5,845 from Excise Fund and Fire Fund, respectively). Under the agreement, the County has to pay \$50,000 annually for secure storage and inspection, fire suppression training and other trainings. No related party entity disclosure was included in the Financial Statements. Permian Basin is considered a related entity as the former Executive Director of Permian Basin Training Center is the wife of the County's former Emergency Manager, who oversees the operations of the volunteer fire departments. We noted that competitive bid requirements by the Procurement Code were not followed for this agreement.

OTHER MATTERS

During our walk through and interviews, other matters were brought to our attention that are control deficiencies that should require additional attention of the County.

Our procedures identified the following internal control deficiencies relative to Other Matters:

- Related parties. Currently, the County has no procedures in place to track and identify

related parties and transactions. We recommend that a policy be adopted to ensure timely identification of related parties and transactions as well as to avoid potential conflict of interest.

- PERA Forms. Members of volunteer fire departments are eligible to receive retirement benefits upon meeting the age and service credit requirements. The service credit qualification record is submitted by the department chief to PERA. These forms are not approved by the County or other department independent of the fire departments. Based on our review of the forms, we noted volunteers that are related, for instance, Atoka Fire Department has 5 related volunteers, the Fire Chief and his family members. We've been informed that it's a norm to hire relatives; we consider the importance of additional oversight over this process to ensure completeness and accuracy of the forms. Additionally, we requested a complete list of VFD personnel and the County was unable to produce a listing.

Recommendations for additional procedures:

- Implement a procedure to inventory cell towers, radios and other sensitive equipment.
- Reconcile and update fixed asset detail to include all fire equipment that could be capitalized.
- Perform a review of all large procurements with no bid files.
- Perform a review of purchases made through state wide procurement agreements.
- Review and update policies and procedures over approval of fire excise and state fire funds.
- Review detail supporting VFD PERA eligibility records and update policies and procedures.
- Compile a listing of all VFD personnel.
- Seek opinion from County's legal counsel to determine whether fire volunteers should be considered as employees under NM Procurement Code.



We have discussed these comments and suggestions with County's personnel and we will be pleased to discuss them in further detail at your convenience, to perform any additional study of these matters, or to assist you in implementing the recommendations.

The following findings and recommendations are presented as prescribed by the State Auditor's Office. The County's responses were not subjected to auditing or additional consulting procedures and, accordingly, we express no opinion on them.

PREAMBLE TO ALL RESPONSES OF MANAGEMENT (PROVIDED BY COUNTY'S MANAGEMENT):

The governing body of Eddy County, New Mexico, and its management, have always taken seriously their obligations to provide, on an effective and cost efficient basis, services to the citizens of Eddy County, New Mexico. Of particular importance to the governing body and management is the need to provide effective services relating to the vital needs of public safety to the citizens. This includes adequate funding for the needs of fire suppression, emergency response, and law enforcement. The issues raised in this report involve expenditures actually incurred, invoices actually paid, and services and capital items actually received to respond to and adequately fund the needs for fire services and emergency response.

FINDING 1 – IMPROPER DISBURSEMENT OF FIRE EXCISE FUNDS

CONDITION

Five disbursements were made for the benefit of other municipalities totaling \$655,237.

CRITERIA

Pursuant to ordinance number O-04-47, fire excise funds are generated for the sole purpose of the operational and capital outlay cost of the county fire districts or county ambulance services.

EFFECT

The County is not in compliance with Ordinance number O-04-47. County services operating and capital outlay budgets are reduced by \$655,237 to support operational and capital outlay of other municipalities so funding was not available to support county operations.

CAUSE

The noted disbursements were not approved by the County Commission and County management did not have policies and procedures in place to ensure compliance with the ordinance.

RECOMMENDATION

Update County policies regarding compliance with ordinance O-04-47 and ensure all disbursements are properly approved by management and the Commission, as required.

MANAGEMENT RESPONSE

The County has purchase service agreements and mutual aid agreements with the City of Carlsbad and the City of Artesia. The fire departments in both of these cities routinely respond to calls outside their jurisdiction with respect to fire and EMS calls. As a consequence of these arrangements and the demands they place on the departments' equipment, and at the request of the Carlsbad and Artesia departments, the Eddy County fire board made up of the chiefs of all the volunteer departments, approved the expenditure of excise tax funds for the purchase of these trucks. The Artesia truck is only used on calls in the County. Given the close working relationship

between the cities and the VFD's, the expenditure was determined to be an appropriate and reasonable expenditure. The County will retain title to any such trucks in the future. The expenditures for the village of Loving were appropriate as Loving is a department entitled to funding from the fire excise tax. All expenditures were approved by the county Board of County Commissioners.

FINDING 2 – NO BID CONTRACT TO PURCHASE RADIO SYSTEM WITH FIRE EXCISE FUNDS

CONDITION

In 2006 and 2007, the County considered the purchase of an advanced radio and microwave communication system with an initial estimated cost of \$4,455,194 which was initially proposed to be funded by a NMFA loan pledged by Fire Excise Funds. Documentation provided in Exhibit V notes that Sheriff's Office radio system was in need of replacement and does not mention a need for the independent volunteer fire district or ambulance services. NMFA funding was not obtained; a loan from General Fund was later used to help finance a portion of the acquisition of the system. In the County's September 21, 2010 minutes, the County Commission authorized the loan repayment to the General Fund from the Fire Excise Fund of \$2 million, noting \$600,000 was repaid prior to July 1, 2010 leaving a balance due of \$1.4 million payable at a rate of not less than \$300,000 per year.

- a. No bid file or statewide purchasing agreement was maintained at the County for the initial purchase of \$4,455,194. Two vendors were used for the project with \$866,865 designated for Tower Construction and \$3,588,329 designated for Motorola.
- b. The procurement files provided noted that the purchase of Motorola Supervisory Control and Data Acquisition System (MOSCAD) for \$506,584 was approved by the County Commission in September 2012 under the statewide purchasing agreement 90-000-00-00027. In reviewing the statewide purchasing agreement, we were unable to identify the products and labor services provided based on the Motorola invoice to the descriptions of products and services available in the statewide purchasing agreement. The pricing summary showed the equipment of \$205,531, services of \$281,358 and tax of \$19,695 for a total of \$506,584.
- c. From December 2008 to June 2014, the County expended \$604,034 for service and maintenance agreements and an additional \$451,138 for equipment and repairs relative to the advanced radio and microwave communication system and MOSCAD. No bid file or statewide purchasing agreement was maintained at the County.

- d. Milestone payments of \$727,384 and \$947,713 on November 25, 2008 and February 24, 2009, respectively, were made using P-Card of the former Emergency Manager and without additional approvals, despite the significance of the amount.

CRITERIA

Per state procurement code NMSA 1978 Section 13 requires that any services or purchases over \$50,000 (\$60,000 starting FY 2014) go through the competitive bidding process. The County owes a duty to the State and its citizens to act in their best interest.

EFFECT

The County is not in compliance with NMSA 1978 Section 13-1 as it relates to competitive bidding and fire excise funds were used to benefit the Sheriff's office.

NMSA 1978 Section 13-1-96 provides for a civil penalty for any person, firm or corporation that knowingly violates any provision of the Procurement Code of not more than \$1,000 for each procurement violation. In addition, Section 13-1-199 provides that any business or person that willfully violates the Procurement Code is guilty of: (a) a misdemeanor if transaction involves \$50,000 or less; or (b) a fourth degree felony if the transaction involves more than \$50,000.

CAUSE

Lack of oversight or enforcement of County and state provisions and policies.

RECOMMENDATION

Education and enforcement of current County and state provisions and policies. Improved oversight of the procurement process, and review of the established authorization limit on P-cards.

MANAGEMENT RESPONSE

The expenditure was an appropriate use of fire excise funds. The election resolution authorizing the election which approved the tax expressly provided that one of the purposes for which the funds could be expended is communication services. The ballot question specifically references communication services. Neither the statute nor ordinance require or contemplate that expenditures of this nature cannot also provide benefit to other essential county public safety functions. It would serve no purpose to have dual, redundant communication systems. Indeed, if such were to occur, the citizens of Eddy County would have every right to question the wisdom of requiring such. The communication system is used every day by volunteer fire departments in every corner of our largely rural county. The availability of a system of such capability has had a positive effect on ISO ratings for fire insurance. It has enabled our departments to communicate and coordinate with other departments and federal and state agencies to provide public safety services in a more coordinated fashion. Before the construction of the system many areas of the county,

outside the Carlsbad and Artesia areas, were out of effective communication coverage, exposing people and property to needless danger, safety and risk.

With the explosive growth in the oil and gas industry over the last decade and the commensurate increase in heavy truck traffic in rural areas of the county, our volunteers can attest to the need for an adequate communication system. All expenditures were approved by vote of the Board of County Commissioners at public meetings. County officials understood as a consequence of representations of the vendor or its representatives that the purchased items were under a state purchase contract. The County amended its p-card policies some time ago, as reflected in the materials provided to the auditor.

FINDING 3 - IMPROVE CONTROLS OVER FIRE EXCISE FUND ACCOUNTING

CONDITION

During our sampling of invoices we noted a disbursement for Roadrunner Environmental which was shown as \$8,750 on the general ledger. However, the supporting documentation shows an actual amount of \$288. The County could not provide explanation or additional documentation for this issue.

CRITERIA

Effective accounting policies are critical to any operation. Without proper expense tracking, the County is susceptible to significant risk.

EFFECT

Improper or weak accounting may pose the question as to the County's ability to manage and account for their legitimate expenditures and prevent fraudulent activity.

CAUSE

No documentation or explanation could be provided.

RECOMMENDATION

Implementation and maintenance of effective accounting policies and oversight.

MANAGEMENT RESPONSE

The finding listed is mixed between two different departments and funds. The \$288 expense is for Roadrunner Sewer and Drain to unplug a stopped drain at the detention center (Triadic fund 453). The \$8,750 expense is to Roadrunner Environmental for fencing/ landscaping at Joel VFD Station 3 (Triadic fund 555).

FINDING 4 – EMERGENCY PROCUREMENT

CONDITION

Purchase was made of 24 air packs totaling \$99,984 under the emergency procurement provision without proper explanation or documentation to support the emergency procurement provision.

CRITERIA

In accordance with NMSA 1978 Section 13-1-127 emergency conditions exist when, “a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. 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.”

The provision also states that procurements shall be made with competition as is practicable under the circumstances.

EFFECT

The County is not in compliance with NMSA 1978 Section 13-1-127 and the purchase may not have been awarded at a competitive price.

NMSA 1978 Section 13-1-96 provides for a civil penalty for any person, firm or corporation that knowingly violates any provision of the Procurement Code of not more than \$1,000 for each procurement violation. In addition, Section 13-1-199 provides that any business or person that willfully violates the Procurement Code is guilty of: (a) a misdemeanor if transaction involves \$50,000 or less; or (b) a fourth degree felony if the transaction involves more than \$50,000.

CAUSE

The County did not have controls in place to ensure that purchases were properly documented.

RECOMMENDATION

Better education for fire chiefs and procurement officers on the use of emergency purchasing.

MANAGEMENT RESPONSE

Self-Contained Breathing Apparatus (SCBA's) are an essential and vital part of the tools and equipment available to all fire departments, including volunteer departments. When they are unserviceable a department is hampered or may be unable to respond to structure fires, vehicle fires or fires at industrial facilities, including tank batteries. As a result, the replacement of these SCBA's does, in fact, constitute a safety issue and an emergency. The time reflected from approval to

receipt of said equipment is the time it took to get the equipment. Going through the standard procurement process would have extended this time greatly which would have created a safety and an emergency situation.

FINDING 5 – LACK OF ADEQUATE EQUIPMENT INVENTORY POLICIES

CONDITION

A proper equipment inventory could not be provided for the selected fire districts nor evidence of one having been performed during the 2014 audit. The County was in the process of performing an independent physical inventory for 2015. We noted that \$3,283,319.36 of equipment items were not included in this inventory count.

CRITERIA

In accordance with State Fire Marshal rules 10.25.10.18 NMAC, all fire departments shall maintain an equipment inventory list. All single items purchased with State Fire Funds costing \$250 or more shall be listed on the fire department's inventory list. A physical inventory of all such items shall be conducted on an annual basis.

EFFECT

The County is not compliance with State Fire Marshal rules 10.25.10.18. In addition, the County is more susceptible to fraud risk without a proper equipment inventory.

CAUSE

Lack of proper inventory policy.

RECOMMENDATION

The County should implement inventory policies, ensure annual inventories are performed and maintain a proper equipment inventory listing.

MANAGEMENT RESPONSE

Eddy County recognizes the lack of inventory control in recent years and has taken steps necessary to resolve this issue. During Eddy County's 2015 audit, Eddy County demonstrated capital asset inventory control, including performing inventory counts at VFD stations. State Fire Funds specific inventories are the responsibility of the elected volunteer Fire Chiefs and are maintained outside of the Eddy County capital asset inventory control system.

FINDING 6 – NO BID PROCUREMENT OF MECHANICAL SERVICES

CONDITION

We noted mechanical services were procured amounting to \$204,950 in a two year period without competitive bidding. The mechanical contractor is a volunteer firefighter for Atoka Fire Department and son of the Fire Chief.

CRITERIA

Per state procurement code requires that any services or purchases over \$50,000 (\$60,000 starting FY 2014) go through the competitive bidding process. He may also be considered an employee under provision NMSA 1978 Section 13-1-54, making him subject to unlawful employee participation under provision NMSA 1978 Section 13-1-190.

In Addition, NMSA 1978 Section 10-16-7 (Governmental Conduct Act) provides the following: A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process.

EFFECT

The County is not in compliance with NMSA 1978 Section 13-1 as it relates to competitive bidding and the purchase may not have been awarded at a competitive price. In addition, the Governmental Conduct Act may have been violated if the mechanical contractor is considered as employee.

NMSA 1978 Section 13-1-96 provides for a civil penalty for any person, firm or corporation that knowingly violates any provision of the Procurement Code of not more than \$1,000 for each procurement violation. In addition, Section 13-1-199 provides that any business or person that willfully violates the Procurement Code is guilty of: (a) a misdemeanor if transaction involves \$50,000 or less; or (b) a fourth degree felony if the transaction involves more than \$50,000.

NMSA 1978 Section 10-16-17 provides that any person who knowingly and willfully violates any provisions of the Governmental Conduct Act shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or both.

CAUSE

Lack of procurement controls to ensure proper competitive bidding.

RECOMMENDATION

The County should update policies and procedures to ensure proper adherence to state procurement codes. The County should also seek legal counsel as to the proper handling and determination of whether volunteer fire fighters should be considered as employees and if the County's policies should be updated to ensure compliance with procurement codes.

MANAGEMENT RESPONSE

The County has satisfied itself that the services referenced were in fact received. The equipment in question is specialized and, as a consequence, there are limited vendors with the expertise to perform the repair and maintenance work required. Currently, this work is being handled by vendors out of Las Cruces. The need to get these vital items of public safety equipment back in service quickly counsels using local providers if available. The County has implemented policies to address these issues.

FINDING 7 – TRAVEL EXPENSES

CONDITION

During our sampling, we noted \$818.40 travel expenditure without proper travel authorization.

CRITERIA

Per County travel policy, all elected officials and County employees must request and obtain approval from the County Commission for any overnight travel outside the boundaries of Eddy County.

EFFECT

Increased risk of fraud to the County and unauthorized expenses may have been incurred.

CAUSE

Unenforced policies and lack of oversight.

RECOMMENDATION

Establish controls to ensure current travel policies are enforced and conduct periodic training on travel policies.

MANAGEMENT RESPONSE

While travel documents may not have been completed, the Commission did approve the expenditure with the P-card approval at a regular meeting. Eddy County is in the process of updating its travel policy and forms.

FINDING 8 – NO BID CONTRACT TO PERMIAN BASIN REGIONAL TRAINING CENTER

CONDITION

Disbursements to Permian Basin Regional Training Center, Inc. amounted to \$284,693 (\$278,848 and \$5,845 from Excise Fund and Fire Fund, respectively). Under the agreement, the County has to pay \$50,000 annually for secure storage and inspection, fire suppression training and other trainings. No related party disclosure was included in the financial statements. Permian Basin is considered as a related entity as the former Executive Director of Permian Basin Training Center is the wife of the County's former Emergency Manager, who oversees the operations of the volunteer fire departments.

CRITERIA

Per state procurement code requires that any services or purchases over \$50,000 (\$60,000 starting FY 2014) go through the competitive bidding process. The County owes a duty to the State and its citizens to act in their interest.

In addition, NMSA 1978 Section 10-16-7 (Governmental Conduct Act) provides the following: A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process.

EFFECT

The County is not in compliance with NMSA 1978 Section 13-1-127 and the purchase may not have been awarded at a competitive price. The County did not disclose related party activity in their financial statements. In addition, the provisions of the Governmental Conduct Act under NMSA 1978 Section 10-16-7 were violated.

NMSA 1978 Section 13-1-96 provides for a civil penalty for any person, firm or corporation that knowingly violates any provision of the Procurement Code of not more than \$1,000 for each procurement violation. In addition, Section 13-1-199 provides that any business or person that willfully violates the Procurement Code is guilty of: (a) a misdemeanor if transaction involves \$50,000 or less; or (b) a fourth degree felony if the transaction involves more than \$50,000.

NMSA 1978 Section 10-16-17 provides that any person who knowingly and willfully violates any provisions of the Governmental Conduct Act shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year or both.

CAUSE

Unenforced policies and lack of oversight over procurements. Lack of proper policies regarding related parties and conflicts of interest.

RECOMMENDATION

Establish controls to ensure compliance with current policies over procurement and conduct periodic training on procurement policies. Create and maintain a policy for detecting and tracking potential conflicts of interest and related parties.

MANAGEMENT RESPONSE

The County had a contract in place with Permian Basin Regional Training Center (PBRTC) long before the relative of the former county official became employed by PBRTC. PBRTC always provided the services for which Eddy County contracted. The County agrees that the required disclosure should have been made.

FINDING 9 – PERA FORMS

CONDITION

Members of volunteer fire departments are eligible to receive retirement benefits upon meeting the age and service credit requirements. The service credit qualification record is submitted by the department chief to PERA. These forms are not approved by the County or other department independent of the fire departments. We noted that volunteers are often related family members for instance the Atoka Fire Department has 5 related volunteers, the Fire Chief and his family members.

CRITERIA

The New Mexico Volunteer Firefighters Retirement Act (VFRA), established in 1983, applies to volunteer non-salaried firefighters who:

- are listed as an active member on the rolls of a fire department, and
- whose first year of service credit was earned during or after the year they turned 16 years old.

Effective January 1, 2009, a volunteer will earn one year of service credit as a volunteer firefighter for each year that they:

- attend 50% of all scheduled fire drills,
- attend 50% of all scheduled business meetings, and
- participate in at least 50% of all emergency response calls they are held responsible to attend.

By March 31st of each year the chief of each fire department shall submit to PERA documentation of the qualifications of each member for the previous year. For service credit that was earned but not reported to PERA, or was reported incorrectly, a member may adjust service credit for prior

calendar years beginning with 1979. An “Adjusted Qualification Record” signed in front of a Notary Public and signed by the mayor or chair of the county commission must be submitted to PERA.

EFFECT

Increased risk to the County of fraud, specifically by having members service credit qualification misrepresented in order to receive benefits.

RECOMMENDATION

Implement policies for independent verification of service credit qualifications for all volunteers.

MANAGEMENT RESPONSE

Documenting members and compliance with fire call, attendance and PERA eligibility requirements is vested solely with the elected Fire Chief of each department.

EXHIBIT I

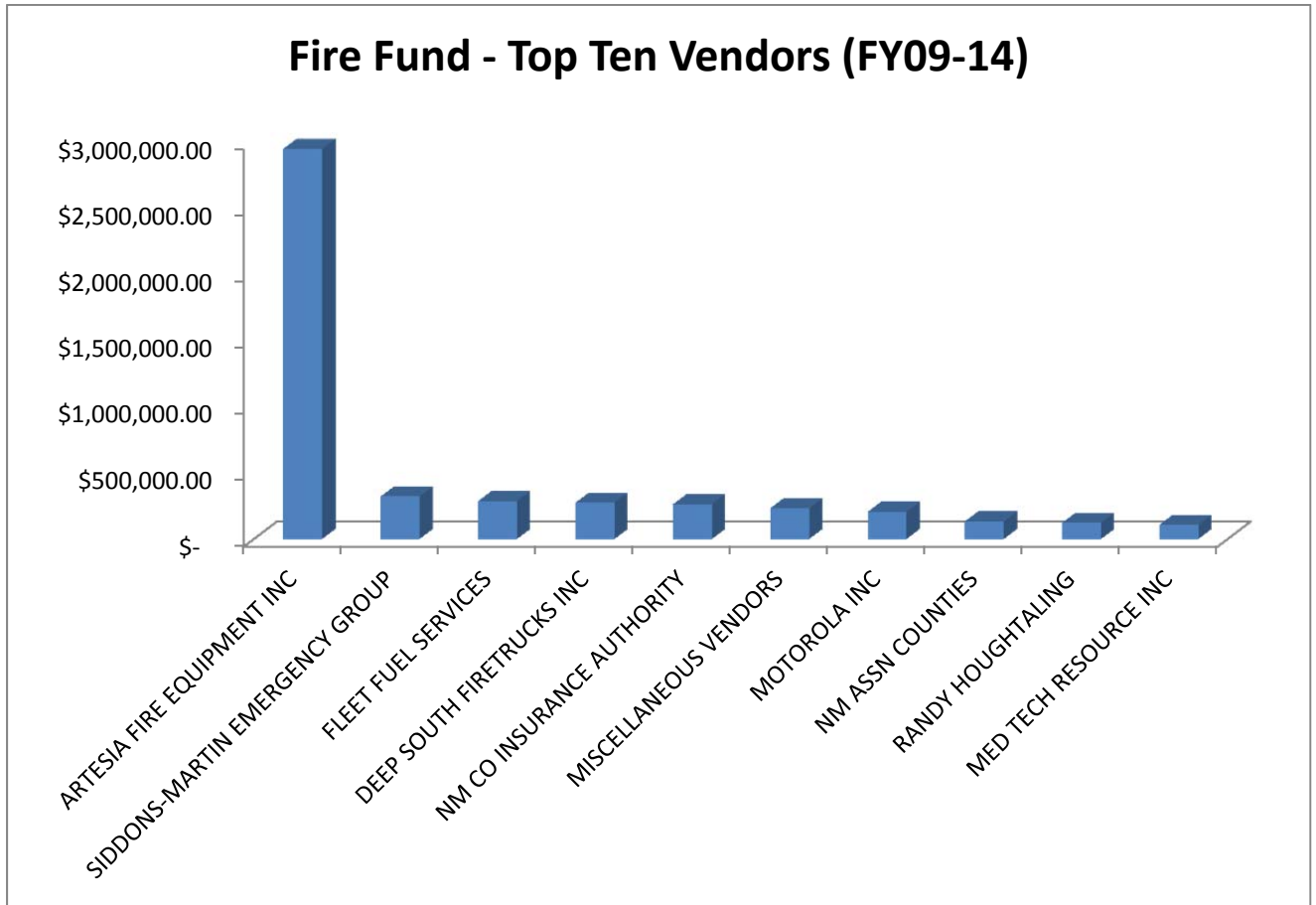


EXHIBIT II

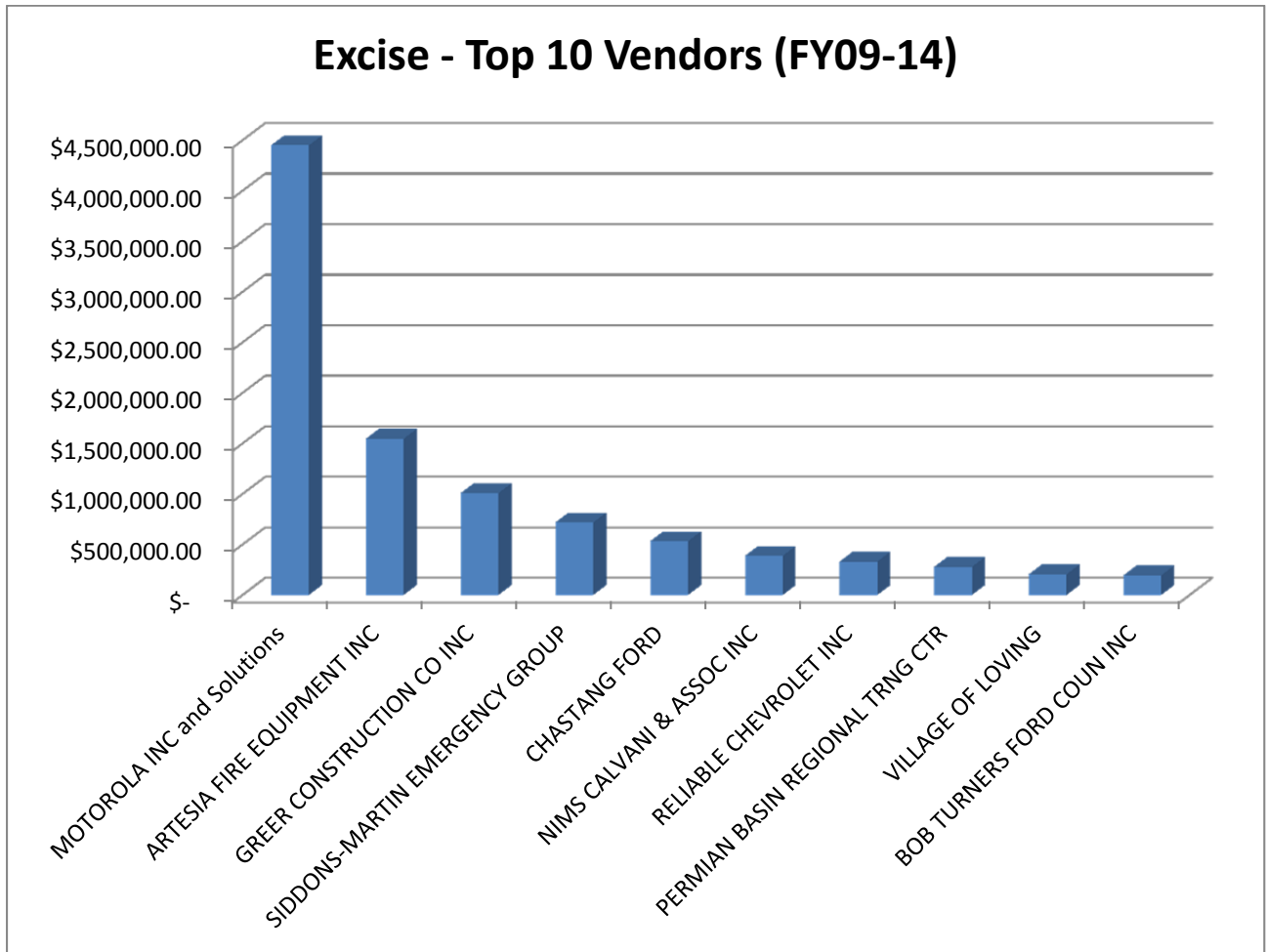


EXHIBIT III

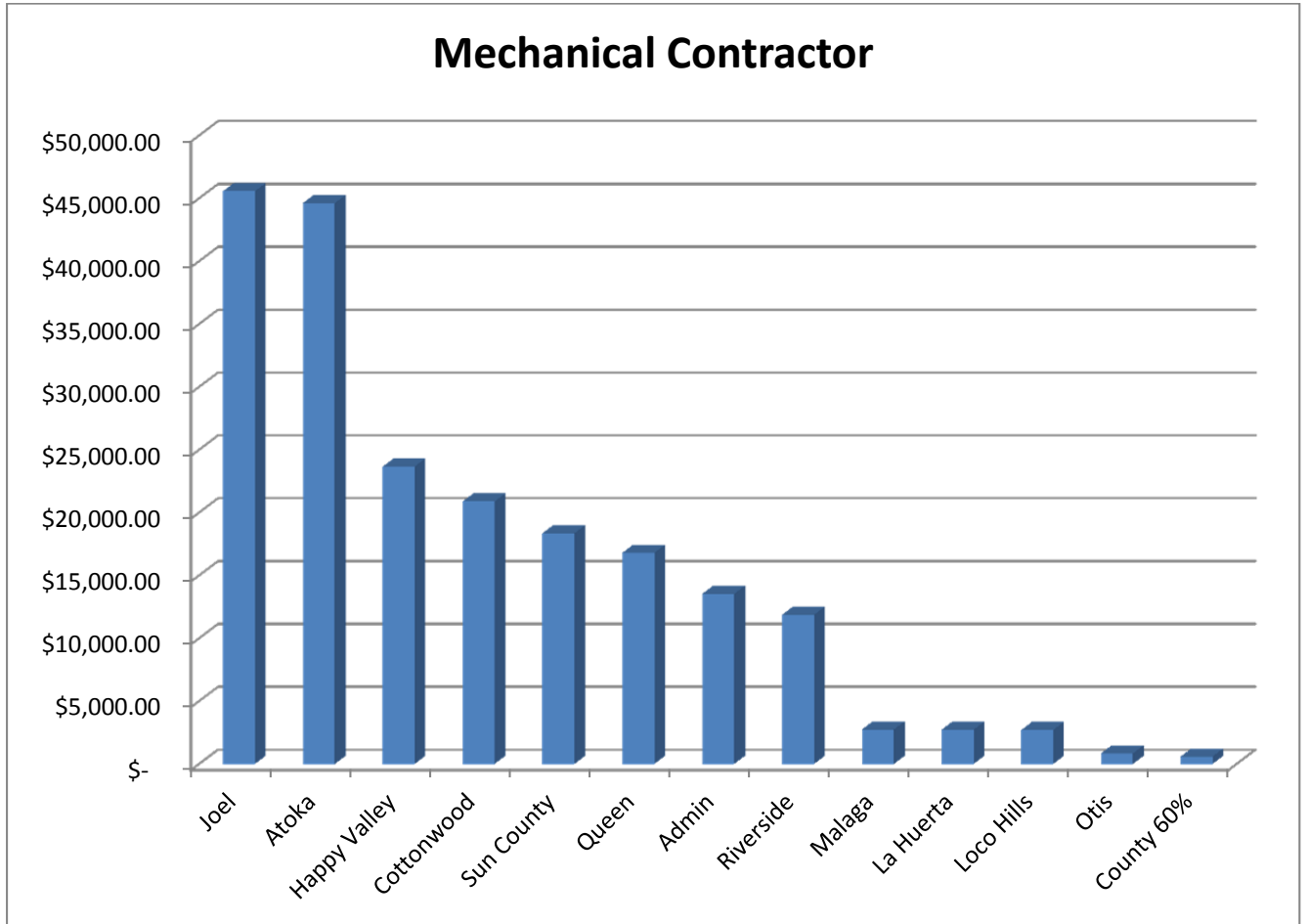
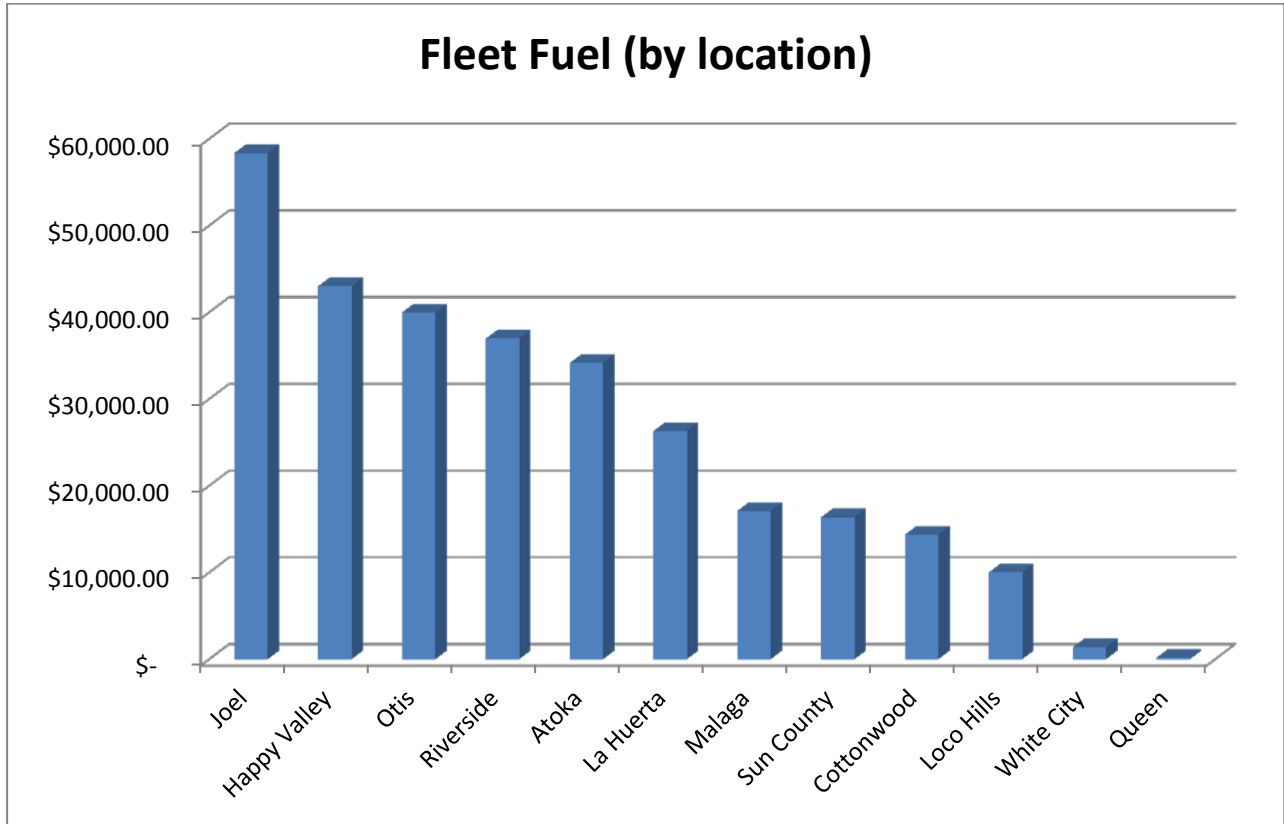


EXHIBIT IV



B. Total Project Cost & Sources of Funds Detail.

Equipment Items	NMFA Funds Requested	Other Public Funds*	Private Funds	Total
Tower Construction	\$616865	\$250000	\$0	\$866,865.00
Emergency Communication Equipment	\$2383135	\$1205194	\$0	\$3,588,329.00
	\$	\$	\$	\$ 0.00
	\$	\$	\$	\$ 0.00
Total Cost:	\$3,000,000.00	\$1,455,194.00	\$ 0.00	\$4,455,194.00

III. FINANCING

A. Specify the revenue to be pledged as security for the NMFA loan (a revenue source must be pledged for this type of project).

- Municipal Local Option GRT – please specify: _____
- County Option GRT – please specify: Fire Excise
- Other Tax-Based Revenue: _____
- State-Shared GRT
- Law Enforcement Funds
- Fire Protection Funds
- Other Revenue: _____

B. Preferred financing term: 7 years.

C. Is any debt being repaid from the revenue source(s) referenced in A (1)? Yes No

If yes, provide bond or loan documents and payment schedule for any existing debt service being paid from the same revenues that would be used to repay a NMFA loan.

**Eddy County, New Mexico
Advanced Radio and Microwave
Communications System**

Executive Summary



NMFA Use Only:	
App. #:	-PP
FA assigned:	
Legislative Authorization	

PUBLIC PROJECT REVOLVING FUND EQUIPMENT APPLICATION

I. GENERAL INFORMATION

A. APPLICANT /ENTITY

		Application Date:	8/15/2006
Applicant/Entity:	Eddy County		
Address:	101 W. Greene St.		
County	Eddy	Census Tract:	EDDY
Legislative District:	Senate:	34, 41 42	House: 54, 55, 58
Phone: 5058879511	Fax: 5052341835	Email Address:	smassey@co.eddy.nm.us
Individual Completing Application: Joel Arnwine			
Address:	101 W. Greene St.		
Phone: 5058853581	Fax: 5056283973	Email Address:	jarnwine@co.eddy.nm.us

II. PROJECT SUMMARY

A. Project Description. Complete the following information, using additional paper if necessary. Include any additional documents that may be useful in reviewing this project, i.e. architectural designs, feasibility studies, business plan, etc.

1. Description of Equipment:

Secure digital simulcast emergency communications infrastructure (including tower construction, transmitters, subscriber units, installation, and project management).

2. When do you need NMFA funds available? 07/2007

1. Executive Summary

Introduction

In Eddy County, public safety agencies rely on their two-way radios for communications with their home offices as well as with each other. In a County as geographically large as Eddy, reliable radio communications can literally be a matter of life and death to the citizens as well as the public safety first responders themselves.

The ability for a 911 operator to quickly reach the proper first responders is critical. Whether it is in response to a traffic accident or heart attack, response time is measured in minutes. If the first responder can not be contacted immediately, ability to save a critically injured person rapidly diminishes.

Current Situation

The existing Sheriff's Office radio system suffers in two principal areas:

- Lack of county-wide coverage
- Inability for Deputies to communicate from one area of the county to another deputy in another part of the county

The existing radio system requires the Sheriff's Office to divide the county into three areas.

These are:

- North (Artesia, Hope, Loco Hills)
- South (Carlsbad, Loving, Malaga)
- Southwest (White's City and south)

The reason is simply that the transmitters in these three areas do not have sufficient range to cover throughout the county.

Other agencies utilize similar radio systems resulting in limited communications in their immediate area.

Because of this regional limitation, the ability to rapidly move response resources from one area of the County to another in response to a disaster situation is greatly restricted.

For example, a Deputy Sheriff traveling from Artesia to Carlsbad must switch radio channels to remain in contact with the radio dispatcher. If the Deputy is involved in a vehicle chase, the loss of driving concentration to change radio channels can be extremely dangerous.

Proposed Solution

There is no single radio transmitter location which can provide radio communications throughout a County as large as Eddy County. However, technology exists to interconnect transmitter sites so that the same messages are sent from multiple sites at the same time.

If the transmitters were interconnected, communications on the same radio channel throughout the County could be achieved.

However, the three sites in use today do not cover the County in its entirety. There are several areas where communications are spotty. These areas need to have additional transmitter resources provided.

Motorola's system design includes a total of five (5) transmitter/receiver sites. These would be:

- C-Hill (current site near Carlsbad)
- 12 Mile (site east of Artesia)
- Dark Canyon (current site located in the mountains in southwestern Eddy County)
- Hope (new site located in the town of Hope west of Artesia)
- Loving (new site located just outside the town of Loving southeast of Carlsbad)

All five sites would be interconnected via the new microwave system.

Radio messages would then be transmitted from all five sites simultaneously by means of a technique called Simulcast. All five sites are under the control of a centrally located controller from which the radio messages are sent to the individual sites.

The central controller provides each transmission with exact timing derived from the Global Positioning System (GPS). Each remote site is also equipped with GPS equipment so the all sites use the same exact time standard. The use of these time standards allows all sites to transmit the same message at exactly the same time.

Using this technique allows first responders throughout the entire county to hear the same message at the same time on the same radio channel.

Receivers are also located at the transmitter sites to receive traffic originated by the field deputies. This audio is routed to a central location, consolidated and then handed over to the simulcast controller for retransmission throughout the county.

Advanced Radio and Microwave Communications System

This technique allows deputies throughout the county to both speak to and hear other deputies no matter if they are located in the northern or southern parts of the county.

To achieve the goal of broadcasting the same information simultaneously from five sites throughout the County, the radio sites must be interlinked. To provide this connectivity, Motorola is proposing a microwave point-to-point radio system.

Fixed position microwave radio provides an extremely reliable communications method which is not subject to many of the types of failure that a telephone based system is subject to. By its nature, the microwave system has the ability to support other applications in addition to the current purpose of radio traffic.

Radio Dispatch Capabilities

Radio dispatch for the Sheriff's Office relies on the use of two positions of radio dispatch equipment. This equipment is now obsolete and limited in capabilities. This equipment should be replaced with new equipment and augmented with additional positions.

As an option, Motorola is proposing a new dispatch console. The Motorola MCC-5500 radio dispatch console is a PC-based state-of-the-art dispatching system.

Working Together...

Motorola will work with Eddy County to design and implement a system that meets Eddy County's current needs, as well as provides flexibility to grow for future needs. By working together with you, Motorola can provide integrated information and communication networks to improve your effectiveness and to better serve the community.

We offer experienced personnel and proven processes that are needed for the smooth implementation of any project.

Motorola will assemble a team to work with the County on this important project consisting of account managers, engineers, project managers, system technologists, and system maintenance support personnel. The County project manager and the Motorola project manager will work together closely throughout the implementation of the project.

Each member of the Motorola team stays abreast of the latest methods and techniques in their discipline through our comprehensive employee training programs offered through alliances with George Washington University, ESI International, and Motorola University.

By selecting Motorola, you gain the benefit of our investment in our people. Their qualifications and training have allowed us to implement and integrate some of the largest and most complex networks in the world—on time and with solid, reliable results. Our team will provide Eddy County with:

- **Coordinated management**—Our project manager serves as a single point of contact, works with Eddy County to oversee the project, and answers any questions the County

Advanced Radio and Microwave Communications System

may have about the project. The project manager brings together the people and the resources for the project, and then manages them toward meeting every project milestone.

- **Implementation services**—In addition to a project manager, our team includes highly trained engineers, system technologists, and customer support managers. Our engineers will work with the County to finalize the system design. Our system technologists install and test the system. Our customer support managers work with the County to design a maintenance program specifically for the County.
- **Proven implementation processes**—Motorola will use its proven implementation processes that we have developed and fine-tuned over the years to ensure the timeliness and quality of our work.

From concept to delivery, design and installation, Motorola's direct sales representatives, system integration team, engineers, and service maintenance providers are ready to work together with you.

Benefiting from Motorola's Experience...

As we enter a new era of information and communication needs, Motorola is addressing critical demands by providing public safety customers with innovative solutions that include software, hardware, and services to improve operational performance. Our customers gain the benefit of our experience in many ways, such as:

- **Peace of mind**—For over 70 years, Motorola has been a trusted source for mission-critical public safety communications systems and is a leading provider of two-way radio products, systems and services as well as large integrated communication and information technology systems for business and government applications.
- **Presence**—Motorola's sales force, combined with an extensive dealer and service center network, provides Motorola with over 7,000 points-of-presence worldwide, with solutions that cover a

A History of Firsts

- *First police two-way radio system*
- *First FM portable two-way radio (Handie Talkie)*
- *First trunked radio system*
- *First wireless data system*
- *First digitally encrypted two-way radio*
- *First commercial digital radio system*
- *First digital integrated wireless system*
- *First voice, data, and messaging system*
- *First software upgradeable radio*

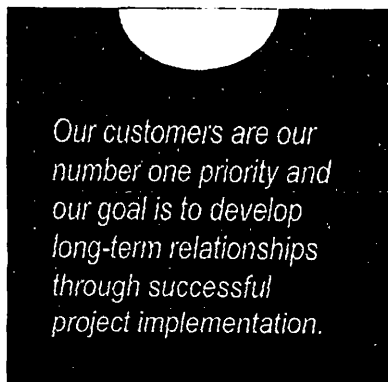
Advanced Radio and Microwave Communications System

variety of commercial, government, and industrial communication needs.

- **Innovative solutions**—Motorola provides more than just enabling technology. Motorola works with customers from concept to installation while continuously upgrading solutions to bring rapid mobile intelligence to customer operations. Motorola is committed to helping customers navigate the rapidly changing landscape to make their organizations the best that they can be, now and in the future.
- **Established resources and processes**—From our Customer Center for Solutions Integration (CCSi) and System Support Center (SSC), to our processes for site readiness, testing, and problem escalation, Motorola has made investments in facilities, people, and services to support project implementation and maintenance.
- **Quality**—Dedication to quality is a way of life at Motorola. The company's ongoing process of continuous improvement reaches out for change, refinement, and even revolution in pursuit of quality excellence as recognized through the Malcolm Baldrige award in manufacturing for CGISS. Motorola was a recipient of the Baldrige Award in the award's inaugural year of 1988 and was again honored in November of 2002 by President George W. Bush and Commerce Secretary Don Evans. The Baldrige Award is the United State's premier award for performance excellence and quality achievement. Earning the Malcolm Baldrige National Quality Award acknowledges Motorola's CGISS' (Commercial, Government, and Industrial Solutions Sector) dedication to rigorous quality related processes and improvements over time. Motorola has been, and continues to be, the leading manufacturer and supplier of communications equipment and systems, both domestically and worldwide.

Committing to Your Success...

As a trusted solution provider for numerous cities and counties in a public safety role for many years, Motorola is prepared to assist the County with its current communication dispatch needs. Supported by a Motorola implementation team dedicated to the success of the project and Motorola's responsive local services, Eddy County can be assured of the timely implementation of its system. Motorola is committed to your success by:

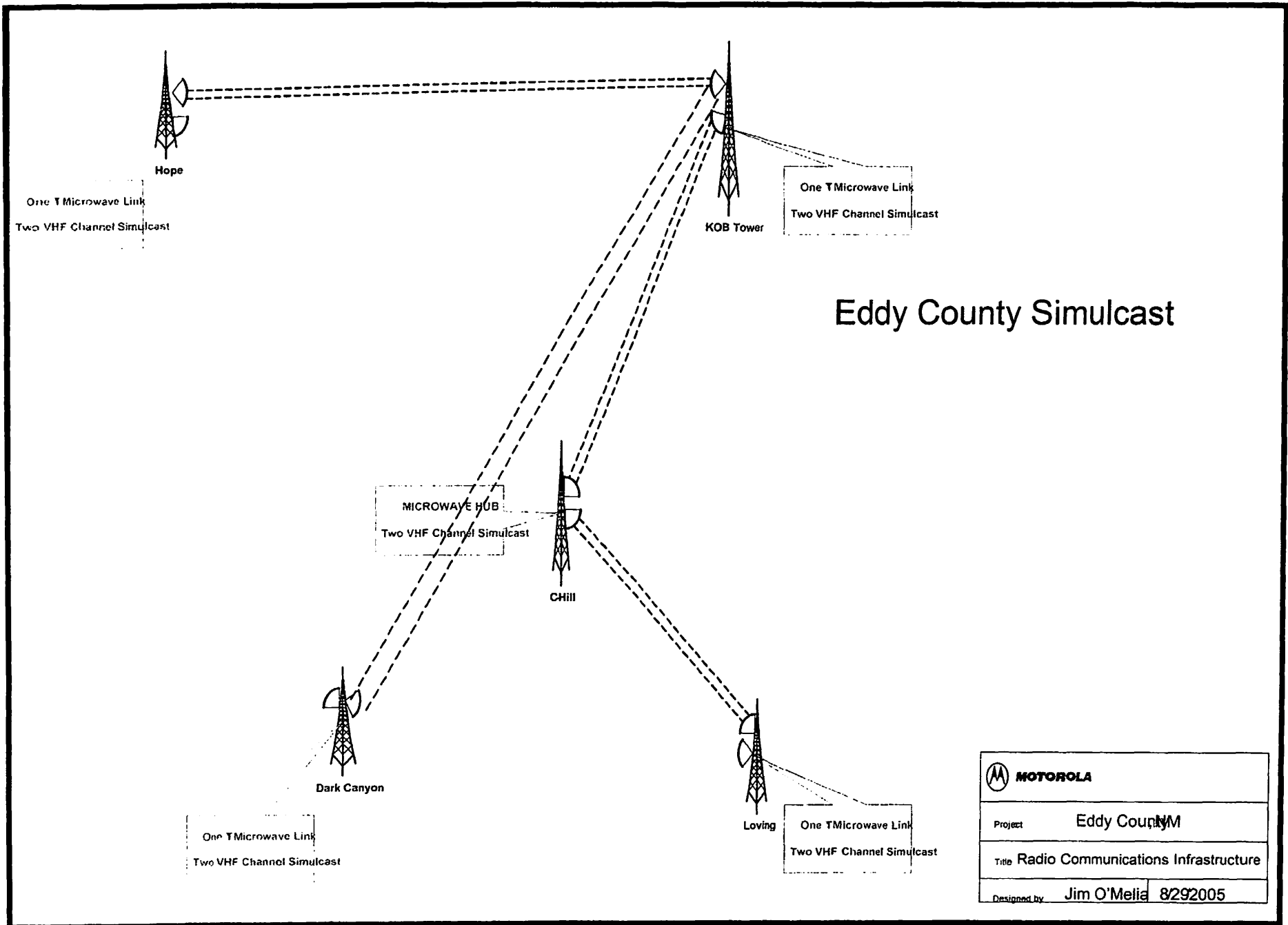


organization.


- Delivering total, integrated communications solutions that empower your organization.
- Drawing on experience, skills, and an extensive portfolio of technologies, services, and capabilities to complete your project.
- Meeting our commitments so that you can be confident we will provide the right solution for your

Advanced Radio and Microwave Communications System

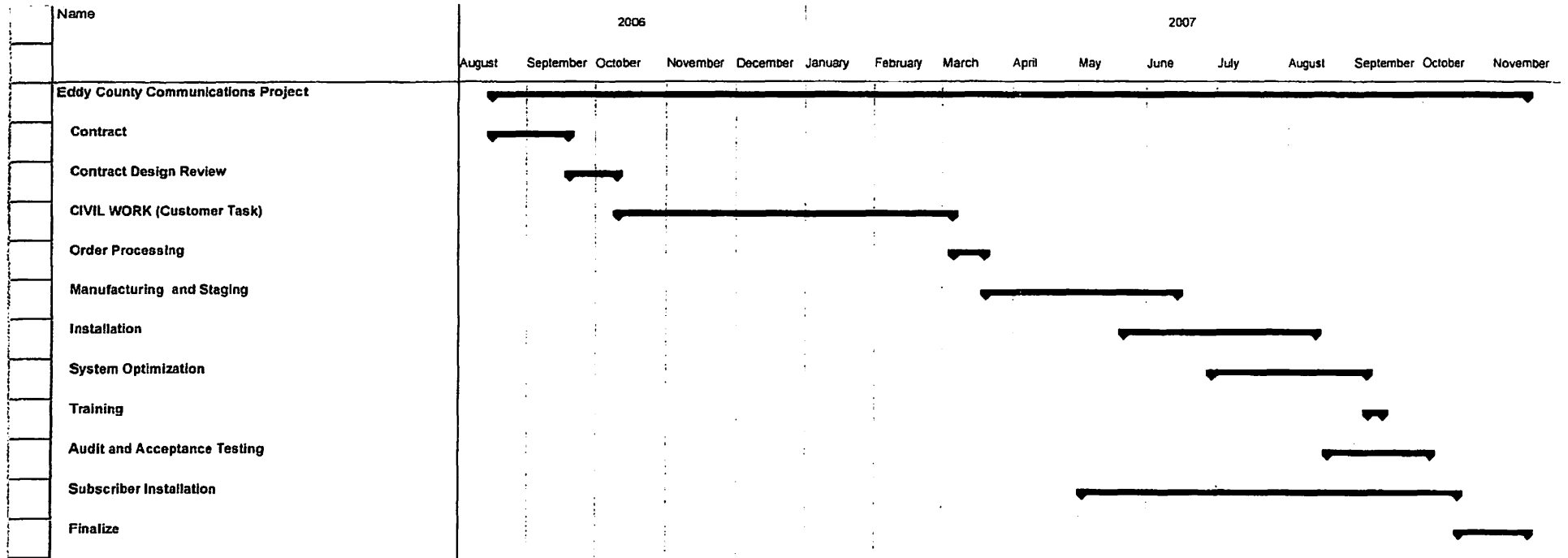
Your community is depending on your ability to get the right information to the right people, in the right place, at the right time. Motorola is committed to working with Eddy County to make that happen. Motorola looks forward to continuing our relationship with the County and continuing to be a positive presence in the community for generations to come.



Eddy County Simulcast

 MOTOROLA	
Project	Eddy County NM
Title	Radio Communications Infrastructure
Designed by	Jim O'Melia 8/29/2005

EDDY CNTY COMM PROJ NM-05Q100A - Proposal Gantt Summary



EDDY COUNTY NM

EQUIPMENT LIST SUMMARY

Motorola Equipment	\$ 1,790,697.50	\$	1,432,558.00
Equipment to Staging	\$ 1,008,518.00		
 Options			
Console	\$ 92,006.70	\$	73,605.36
Subscribers	\$ 792,337.50	\$	633,870.00
	\$ 2,675,041.70	\$	2,140,033.36

Services			
Project Management / E&T	\$ 274,262.00	\$	274,262.00
Eng/ST/Doc/CCSI/E&T	\$ 365,899.00	\$	365,899.00
Local Services - Install / Misc	\$ 518,853.00	\$	518,853.00
Training	\$ 10,545.00	\$	10,545.00
Project Risk	\$ 93,024.00	\$	93,024.00
Svcs Wrap - 7X24 Extended	\$ 94,134.00	\$	94,134.00
	\$ 1,356,717.00	\$	1,356,717.00
	Tax on Svcs	0.0675 \$	91,578.40
	Svcs Total w/Tax	\$	1,448,295.40

\$ 3,588,328.76

simple projection	5 \$	717,665.75	per year
	7 \$	512,618.39	per year
	10 \$	358,832.88	per year

INTREST IS NOT INCLUDED AT THIS POINT
This is for projecting information at this point



BUDGETARY PROPOSAL

To: Joel Arnwine
Eddy County

From: Advanced Tower Services, Inc.
2417 Baylor Drive SE
Albuquerque, NM 87106
505-244-3321
505-244-3675 fax
Cliff Barbieri

Date: Aug. 03, 2006

We are pleased to submit our proposal on the following scope of work;

Item	Quantity	Description	Each	Extended
1		Loving		
1a	1	480' guyed tower, includes dual mode strobes, antenna-dish mounts, vertical waveguide support hardware, safety climb device, foundations and erection.	\$91,250.00	\$91,250.00
1b	1	8'Wx12'Lx9'H Modular Connections concrete shelter, includes slab type foundation, transport, offloading and setup	\$37,600.00	\$37,600.00
1c	1	QT020 Generac 20kw generator - propane. Includes generator, transfer switch, concrete pad, transportation, offload and place and startup testing	\$15,850.00	\$15,850.00
1d	1	Fence, assumes 50' x 50' compound with gate, and fences around each guy anchor point	\$10,500.00	\$10,500.00
1e	1	Electrical - includes up to 50' of buried conduit with meter can to be placed on utility furnished pole outside of the fenced compound.	\$8,900.00	\$8,900.00
1f	1	Site civil, includes grubbing, grading, ice bridge, landscape fabric, gravel and grounding per R56.	\$8,700.00	\$8,700.00
Subtotal - Loving				\$172,800.00
2		Carlsbad North		
2a	1	480' guyed tower, includes dual mode strobes, antenna-dish mounts, vertical waveguide support hardware, safety climb device, foundations and erection.	\$95,250.00	\$95,250.00
2b	1	8'Wx12'Lx9'H Modular Connections concrete shelter, includes slab type foundation, transport, offloading and setup	\$37,600.00	\$37,600.00
2c	1	QT020 Generac 20kw generator - propane. Includes generator, transfer switch, concrete pad, transportation, offload and place and startup testing	\$15,850.00	\$15,850.00

2d	1	Fence, assumes 50' x 50' compound with gate, and fences around each guy anchor point	\$10,500.00	\$10,500.00
2e	1	Electrical - includes up to 50' of buried conduit with meter can to be placed on utility furnished pole outside of the fenced compound.	\$8,900.00	\$8,900.00
2f	1	Site civil, includes grubbing, grading, ice bridge, landscape fabric, gravel and grounding per R56.	\$8,700.00	\$8,700.00
Subtotal - Carlsbad North				\$176,800.00
3		Artesia East		
3a	1	480' guyed tower, includes dual mode strobes, antenna-dish mounts, vertical waveguide support hardware, safety climb device, foundations and erection.	\$96,350.00	\$96,350.00
3b	1	8'Wx12'Lx9'H Modular Connections concrete shelter, includes slab type foundation, transport, offloading and setup	\$37,600.00	\$37,600.00
3c	1	QT020 Generac 20kw generator - propane. Includes generator, transfer switch, concrete pad, transportation, offload and place and startup testing	\$15,850.00	\$15,850.00
3d	1	Fence, assumes 50' x 50' compound with gate, and fences around each guy anchor point	\$10,500.00	\$10,500.00
3e	1	Electrical - includes up to 50' of buried conduit with meter can to be placed on utility furnished pole outside of the fenced compound.	\$8,900.00	\$8,900.00
3f	1	Site civil, includes grubbing, grading, ice bridge, landscape fabric, gravel and grounding per R56.	\$8,700.00	\$8,700.00
Subtotal - Artesia East				\$177,900.00
4		Hope		
4a	1	160' self supporting tower, includes antenna-dish mounts, vertical waveguide support hardware, safety climb device, foundations and erection.	\$65,050.00	\$65,050.00
4b	1	8'Wx12'Lx9'H Modular Connections concrete shelter, includes slab type foundation, transport, offloading and setup	\$37,600.00	\$37,600.00
4c	1	QT020 Generac 20kw generator - propane. Includes generator, transfer switch, concrete pad, transportation, offload and place and startup testing	\$15,850.00	\$15,850.00
4d	1	Fence, assumes 50' x 50' compound with gate, and fences around each guy anchor point	\$10,500.00	\$10,500.00
4e	1	Electrical - includes up to 50' of buried conduit with meter can to be placed on utility furnished pole outside of the fenced compound.	\$8,900.00	\$8,900.00
4f	1	Site civil, includes grubbing, grading, ice bridge, landscape fabric, gravel and grounding per R56.	\$8,700.00	\$8,700.00
Subtotal - Hope				\$146,600.00
5		Dark Canyon		
5a	1	160' self supporting tower, includes antenna-dish mounts, vertical waveguide support hardware, safety climb device, foundations and erection.	\$65,050.00	\$65,050.00

5b	1	8'Wx12'Lx9'H Modular Connections concrete shelter, includes slab type foundation, transport, offloading and setup	\$37,600.00	\$37,600.00
5c	1	QT020 Generac 20kw generator - propane. Includes generator, transfer switch, concrete pad, transportation, offload and place and startup testing	\$15,850.00	\$15,850.00
5d	1	Fence, assumes 50' x 50' compound with gate, and fences around each guy anchor point	\$10,500.00	\$10,500.00
5e	1	Electrical - includes up to 50' of buried conduit with meter can to be placed on utility furnished pole outside of the fenced compound.	\$8,900.00	\$8,900.00
5f	1	Site civil, includes grubbing, grading, ice bridge, landscape fabric, gravel and grounding per R56.	\$8,700.00	\$8,700.00
Subtotal - Dark Canyon				\$146,600.00
			Subtotal - all sites	\$820,700.00
			Gross Receipts Tax - Eddy County 5.6250%	\$46,164.38
			Total	\$866,864.38

Notes

- 1 This proposal is good for 90 days.
- 2 FOB - Destination
- 3 Terms - Net 15, Subject to credit approval.
- 4 Warranty - 1 year on all contractor furnished goods and labor
- 5 Delivery - 8-12 for materials
- 6 Assumptions -
 - a. Customer to provide propane tank and fuel.
 - b. Assumes normal soil conditions for bidding purposes only, customer to provide actual site soil reports for foundation design and final quotations.
 - c. Antennas, dishes and lines to be installed by others or under separate agreement.
 - d. Shelter includes interior cable tray, 200 amp load center and basic electrical package, AC power surge protection, 8 hole entry port, R56 grounding, 2 each 2 ton Bard wall mount air conditioners with 5kw heat strips and lead/lag controller.
 - e.. Generator includes automatic transfer switch and factory technician on site startup
 - f. Fence is 6' high commercial grade chain link with razor wire top. Includes double hung 12' gate, constructed per Motorola R56 specifications.

Accepted By: _____

Customer Signature Date

Contractor Signature Date

Scope of Work

Advanced Tower Services, Inc. (Contractor) agrees to furnish necessary labor, materials, supplies, equipment and tools to perform and complete in a professional manner, the services described in the proposal.

Payment

100% upon completion of scope of work unless credit arrangements have been made, or work duration is longer than one (1) month. Then the Contractor will submit invoices monthly, or as otherwise agreed, for completed portions of services or additional work authorized pursuant to paragraph 5 herein. Client agrees to pay the invoiced amount within 20 days from the date of invoice. Any payment not received by Contractor within 30 days shall be considered to be delinquent and the amounts due contractor shall accrue a late charge of 1.5% per month for each month from date of invoice. In the event any payment due contractor under the terms of this agreement is delinquent, Contractor may suspend all services until all delinquent payments have been received.

Standard of Care

- a. While performing services under this agreement, Contractor shall exercise the degree of skill ordinarily exercised where performing the kind of services in the Scope of Work.
- b. Contractor assumes no responsibility for errors in public data utilized, statements from sources outside of Contractor, or developments resulting from situations outside the control of the Contractor.
- c. The standard of care set forth herein is the sole and exclusive standard of care that will be applied to measure Contractor's performance of the services or the creation of it's work product.

There are no other representations or warranties made by Contractor.

Time for Performance

The work will be completed within the calendar days as described in the scope of work, or as expeditiously as possible.

If the Contractor is delayed at any time in the progress of the work by any act or omission of the Client, or by it's officers, directors, employees, agents and assigns (Representatives), or by any separate contractor employed by the Client, or by changes ordered in the work, or by labor dispute, fire, unusual delay in transportation, adverse weather conditions, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the owner pending arbitration, then the contract time shall be extended by agreement for such reasonable time as required.

Additional Work

The Client, without invalidating the agreement, may order changes in the work within the general scope of the agreement consisting of additions, deletions or revisions of the scope, cost of services and time being adjusted accordingly. All changes in the work shall be authorized in writing. The cost or credit to the Client resulting from a change in the work shall be determined by one or more of the following; (1) by mutual agreement of either a fixed fee and/or unit price to be multiplied by the units worked in determining the total sum; (2) hourly rate per man hour multiplied by the man hours expended; or (3) by other mutually agreeable cost methods. If the outcome of the completed work indicates that additional or different work is required; the Contractor will notify the Client and will use his best professional judgment in assisting the Client in deciding how to proceed. The cost of services will be equitably adjusted by written change order or supplemental agreement between both parties.

Access, Approvals and Permits

Client shall arrange for access and make all provisions for Contractor to enter public and private property as required for Contractor to perform the specified services. Client shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approval and consent from others as may be necessary, unless otherwise stated in the proposal as the responsibility of the Contractor.

Client Provided Information

Work will not commence until the Contractor has received duly executed copy of this contract. The Client shall direct its officers, directors, employees, subcontractors and agents to render reasonable assistance and to provide (promptly upon request) all necessary or appropriate data to the Contractor in connection with its performance under this agreement. Any data furnished shall be furnished at the Client's expense, and the Contractor shall be entitled to rely upon its accuracy and completeness. The Client shall locate for the Contractor, and shall assume responsibility for the accuracy of his representations, as to the locations of all underground utilities, tanks, structures or other installations, unless the express responsibility of the Contractor as stated in the Scope of Work.

Safety

In an emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation and/or extension of time claimed by the Contractor, on account of emergency work shall be determined as set forth under the Additional Work section.

Hazardous Substances

If any hazardous, toxic or dangerous substances as defined by federal, state or local laws, statutes, regulations, ordinances, rules or orders (Hazardous Substances) are encountered at the site, and if these Hazardous Substances require handling, transportation or disposal, Contractor will assist in advising client of his options.

Restoration

The Client understands that in the normal course of work, some minor damage to property may occur including damage to landscaping, sprinkler systems and building finishes. While the Contractor will act to minimize damage, the Client understands that the cost of restoration is not included in this agreement unless expressly stated in the scope of work.

Independent Contractor

Contractor shall perform all work under this agreement as an independent contractor, retaining complete control over its personnel and operations. Neither Contractor nor its subcontractors shall be, or construed to be Client's employees or agents, or have any authority to bind Client in any way.

Indemnity

- a. Contractor shall indemnify and hold harmless Client, and its respective officer, directors, employees, subcontractors, agents and assigns (Representatives), from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorney's fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct Contractor or its Representatives; and provided that such injury, death or property damage is not caused by the sole or contributory negligence of Client or its representatives; and provided further, that Contractor's liability hereunder shall be limited to and not exceed the insurance limits of liability identified in this proposal or the total cost of services under this agreement, whichever amount is less.
- b. Client shall indemnify and hold harmless Contractor, and its Representatives, from and against any and all liabilities, claims, causes of action, suits, losses, damages, costs and demands, including reasonable attorney's fees, resulting from or arising out of, personal injury, including death or property damage, to the extent such injury, death or property damage is caused by the negligence or willful misconduct Client or its Representatives; and provided that such injury, death or property damage is not caused by the sole or contributory negligence of Contractor or its representatives.
- c. The provisions of this paragraph shall survive the completion of the work or termination of the agreement between Contractor and Client.

Dispute Resolution

All claims, disputes and other matters in question between Contractor and Client arising out of, or relating to, this agreement or breach thereof, shall be decided by arbitration in accordance with the construction industry rules of the American Arbitration Association, unless the parties mutually agree otherwise. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Notice of demand for arbitration shall be filed in writing with the other party to the contract agreement within a reasonable time after the claim, dispute or other matter in question has arisen.

Subcontractors

The Contractor reserves the right to subcontract portions of the Scope of Work at his sole discretion.

The Contractor reserves the right to remove and person, firm or corporation (subcontracted to the contractor) from participation in the services being provided to the client.

Termination

If the work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, through no act or fault of the Contractor or its Representatives, or if the client has failed to make payment as provided in this agreement for work performed, or has otherwise stopped the Contractor's work, then the Contractor may at his option provide three (3) days notice to the Client, terminate this agreement and recover from the Client, payment for all work completed, with all costs arising out of such termination.

Entire Agreement

The agreement and any referenced attachments constitute the entire agreement between the Contractor and the Client and supercedes all prior, oral or written representations or agreements. This agreement shall not be modified except in writing and signed by both parties.

Severability

If any of these General Conditions shall be finally determined to be invalid and unenforceable in sole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties.

Applicable Law and Venue

This Agreement shall be governed by the laws of the state of New Mexico. All actions, disputes, claims or other matters arising from this agreement shall be decided per the disputes clause in Albuquerque, New Mexico.

Limitations of Liability

In no event will the Contractor be liable to the Client or anyone else (including third-party beneficiaries), for any consequential, incidental, special or indirect damages, including lost revenue and profits that result in any way connected with the services provided herein.

The Client agrees that the liability of the Contractor arising out of any kind of legal claim (whether in contract, tort or otherwise) in any way connected with the services provided will not exceed the amount the Client originally paid the Contractor for the service, or the available insurance identified elsewhere in the agreement, whichever amount is less.