

AGENDA ITEM 26

Consider approving Master Software License and Service Agreement between the County and RedSky Technologies, Inc. to implement an E-911 management solution.

Jay Schade addressed the Court.

Moved: **Commissioner Boatright**

Seconded: **Judge Doerfler**

Motion: To approve Master Software License and Service Agreement between the County and RedSky Technologies, Inc. to implement an E-911 management solution.

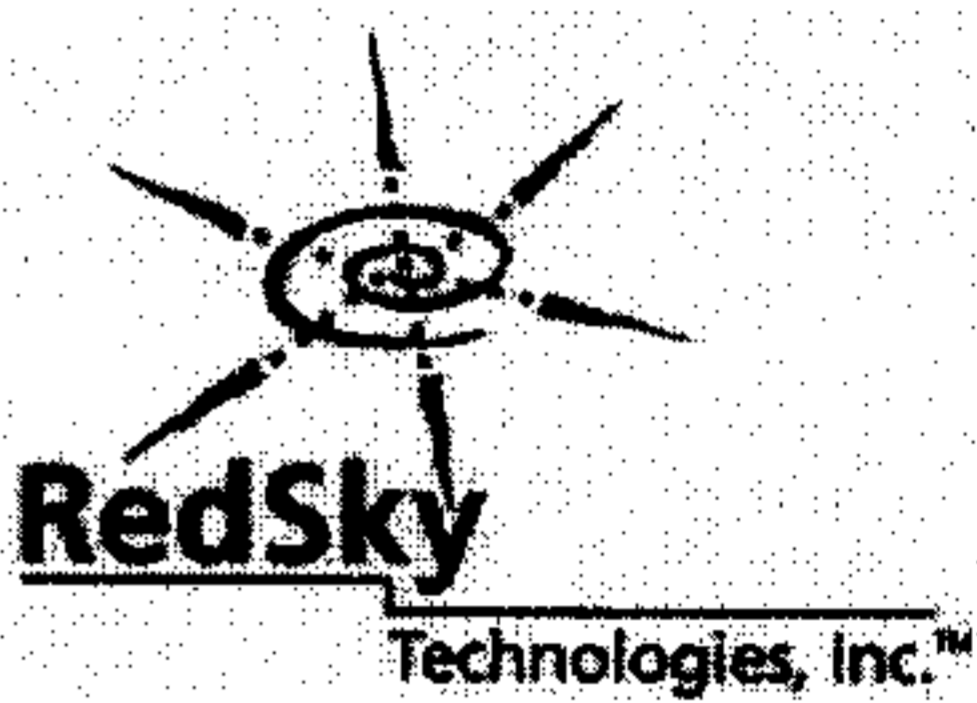
Vote: 4 – 0. **Commissioner Limmer** was absent from the dais.

< Attachment >



A Red Sky Technologies E911 System for Williamson County

RedSky Cielo
E-911
Manager
Pricing



Account: **Williamson County**
Date: **January 15,2004**
Stations **1,544**
PBX's **5**
Locations **10**

Software	
Cielo E-911 Manager Software License Cost	47,864.00
Additional Switch License Cost	9,200.00
Total Software Costs	57,064.00

Services	
Cielo Implementation*	8,800.00
Cielo Audit Services	13,896.00
Cielo Professional Services	13,050.00
Approximate Total Cielo Implementation	35,746.00

Pricing Totals	
Total Software License Costs	57,064.00
Total Cielo Services	35,746.00
Approximate Total for Cielo Software and Services	92,810.00
Go DiRect Fee	1,856.20
Approximate Total with Go DiRect Fee	94,666.20

Prices are valid for 30 days upon receipt of this proposal.
* On-site installation and training

Pricing for Cielo E-911 Manager includes software license and one year of maintenance, upgrades and technical support.



Master Software License and Services Agreement

Agreement No. 54624

Effective Date 1/16/2004

Williamson County having its principal place of business at 710 Main St., Georgetown TX 78626 (hereinafter "Licensee") and Red Sky Technologies, Inc., a Illinois corporation, with its place of business at 925 W. Chicago Ave, Chicago, IL 60622, USA (hereinafter "Red Sky Technologies, Inc."), by their execution hereof do hereby agree as follows:

1. DEFINITIONS.

(a) "Agreement" means these terms and conditions and any terms and conditions contained in any valid written outstanding price quotation made by Red Sky Technologies, Inc. to Licensee ("Quotation") as they apply to the ordering by Licensee, and licensing by Red Sky Technologies, Inc. to Licensee, of proprietary computer software products and/or the acquisition of related services from Red Sky Technologies, Inc. ®. More than one Licensee order may apply to or reference such terms and conditions.

(b) "PC or computer" means a computer device that is part of a network and which is connected to a Server which incorporates the object code licenses for the Software Product(s) for such device and on which the Software is used or is managed by.

(c) "Licensed Computers" is the networked set of Servers and Clients for which Licensee has purchased a Software Product license from Red Sky Technologies, Inc. for each Server and/or Client which the Software Product(s) is to be "used on or which is to be managed by it" (hereinafter "use" of the Software Products shall be construed to have the foregoing meaning).

(d) "Licensee" is the end-user customer defined in the Quotation and/or who has issued an accepted Purchase Order (defined below) and is the party who has purchased the license rights to use the Software Products as defined under the terms and conditions of this Agreement.

(e) "Purchase Order" is the written request to purchase the Software Product license rights herein or services hereto which has been provided by Avaya to Red Sky Technologies, Inc., either in the form of execution of a written Quotation hereof and/or a formal, written purchase order or similar documentation intended to achieve the same purpose, and which is acceptable to and has been accepted by Red Sky Technologies, Inc., either formally in writing by Red Sky Technologies, Inc. or by delivery to Licensee of Software Products or services thereto.

(f) Server is a computer that is a component of a network (a) which provides (i) shared services to workstations over a network, (ii) facilitates other stations, or (iii) handles the requests of a system or software at another site, and (b) which incorporates the object code licenses for the Software Product(s) for such device.

(g) "Software" is defined as the software component of the Software Product.

(i) "Software Product(s)" means one or more Red Sky Technologies, Inc. proprietary computer software programs, in object code format, and their related materials which include the user manuals, documentation, and software release notes associated with them and which products are listed in Red Sky Technologies, Inc.'s current commercial end user price list and/or Quotation, including updates, modifications or new releases of such software programs and documentation as may be provided by Red Sky Technologies, Inc. to Licensee from time to time. The specific products licensed hereunder are those product(s) specified in Licensee's Purchase Order and delivered to Licensee by Red Sky Technologies, Inc.

(j) "Stations" means the number of telephones that have been defined to Licensee's PBX or switch and shall determine the type and size of license purchased.

(k) "Private Branch Exchange (PBX)" or "switch" is the means by which the Licensee delivers telecommunications services. The number of PBX's shall determine the type and size of license purchased.

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2. LICENSE.

(a) **GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, Red Sky Technologies, Inc. grants Licensee a non-exclusive, non-transferable, personal license to use the Software Products.

(b) **SCOPE OF USE.** Licensee may use the Software Products only for Licensee's normal, internal business purposes. Licensee may install and use Software Products on Licensed Computers only in the maximum number of copies of each Software Product defined in Licensee's Purchase Order(s) and for which Licensee has paid the applicable license fee(s). Licensee may also make a reasonable number of copies of the Software in machine-readable form solely for archive or backup purposes in accordance with Licensee's standard archive or backup policies and procedures. Use of Software Products greater than the quantity of licenses paid for is prohibited and any such use will be subject to additional license fee(s).

(c) **USE RESTRICTIONS.** Licensee may configure the Software as allowed by the Software. Licensee will not use or permit the Software Products to be used in any manner that would enable Licensee's customers or any other person or entity to use the Software Products except pursuant to Section 8. Licensee is not authorized to modify, adapt, translate, or create derivative works based upon, in whole or in part any Software Products, or to reverse compile or disassemble the Software. The rights granted Licensee hereunder are restricted exclusively to Licensee and such license and use rights, Software Products may not be assigned, sub-leased, sub-licensed, sold or otherwise transferred except as provided in this Agreement.

(d) **USE ON OTHER COMPUTERS; PERMANENT TRANSFER TO NEW LICENSED COMPUTERS.** Licensee may, without incurring additional license charges, move the Software Products to and use the Software Products on computers other than the Licensed Computers (i) temporarily, if the Licensed Computers cannot be used because of equipment or software malfunctions or (ii) permanently, onto replacement Licensed Computers if the earlier Licensed Computers are replaced by Licensee with other computers; provided: (1) there is no increase in the quantity of Server and/or Client computers using the Software Product(s) over the quantity of Server and/or Client computers for which Licensee has purchased licenses for such product(s), and (2) if Licensee permanently transfers the Software Products to computers at a different location which physically replace the original Licensed Computers, Licensee shall cease use of the Software Products on the original set of computers altogether and will promptly give Red Sky Technologies, Inc. written notice of such relocation. Additional license fee charges are incurred when the Licensee, having Software Products licensed on Licensed Computers, either (i) increases the number of computers using the Software or (ii) transfers Software Product copies to additional computers which are not then licensed to use them and for which the applicable license fee(s) have not been paid.

(e) **LICENSING BASED UPON NUMBER OF STATIONS, NUMBER OF SWITCHES.** Licensee may, as dictated by the number of stations purchased upon licensing, increase the number of stations to the station licensing threshold that was purchased. If the Licensee exceeds the number of stations that were originally licensed, Licensee must notify Red Sky Technologies of such condition and upgrade software licensing to accommodate for additional number of stations. Licensee may, as dictated by the number of switches or PBX's purchased upon licensing, increase the number of switches or PBX's to the PBX licensing threshold that was purchased. If the Licensee exceeds the number of switches or PBX's that were originally licensed Licensee must notify Red Sky Technologies of such condition and upgrade software licensing to accommodate additional number of PBX's. Failure to do so will cause software to not allow additional entries of stations or switches (PBX) and would cause incorrect recording and reporting of information.

(f) **TRANSFER OF LICENSE GRANT.** On written notice, Licensee may, with Red Sky Technologies, Inc.'s concurrence (which shall not be unreasonably withheld) transfer this license grant provided Licensee or transferee, directly or indirectly holds a majority interest, one in the other. As a condition of Red Sky Technologies, Inc.'s consent, transferee must assume, in writing, Licensee's obligations under this Agreement and Licensee remains liable hereunder. Under no condition will such transfer be permitted to a transferee or location outside of the country in which the Software Product(s) are initially licensed.

(g) **DOCUMENTATION.** Licensee may make, for its internal use only and only in conjunction with use of the Software Products, a reasonable number of printed copies of the Software Product user manuals/documentation which may be supplied to Licensee in CD-ROM, tape and/or hard copy format provided Licensee includes all Red Sky Technologies, Inc. copyright and all other proprietary notices on the documentation on such copies it produces.

(h) **TITLE.** This Agreement grants Licensee no title or rights of ownership in the Software Products. All Software Products furnished by Red Sky Technologies, Inc., and all copies thereof made by Licensee, including translations, compilations, and partial copies, and all patches, revisions, and updates thereto are and shall remain the property of Red Sky Technologies, Inc. or Red Sky Technologies, Inc.'s licensors, as applicable.

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(i) PROPRIETARY MARKINGS. Licensee agrees not to remove or destroy any proprietary markings or proprietary legends placed on or contained within the Software Products or any related materials or documentation. Additionally, Licensee agrees to reproduce and include Red Sky Technologies, Inc.'s proprietary and copyright notices on any copies of the Software Products and related materials, or on any portion thereof, including reproduction of the international copyright notice.

(j) VERIFICATION OF SOFTWARE PRODUCTS DEPLOYED. Upon reasonable advance notice to Licensee and on a non-interference basis with Licensee's normal business operations, Red Sky Technologies, Inc. has the right to do a check-up of the quantity of Software Products Licensee has placed into use under this Agreement. Such check-up shall not be conducted more frequently than once per year.

3. PAYMENT TERMS.

(a) PAYMENT. Red Sky Technologies, Inc. will invoice Avaya for the Software Products upon scheduling an implementation date or upon delivery to Licensee and Payment terms and conditions will be governed by RedSky Technologies agreement with Avaya. Maintenance services are payable, annually in advance.

4. MAINTENANCE AND SUPPORT PLANS.

(a) STANDARD MAINTENANCE AND SUPPORT PLAN. During the first 90 day period after delivery of the Software Products for which the applicable Software Product(s) license fee(s) has been paid by Licensee and/or during an annual maintenance period for which Licensee has subscribed to and paid for contracted annual maintenance at Red Sky Technologies, Inc.'s current Software Products' basic annual maintenance charges, Red Sky Technologies, Inc. will provide the following basic support of the current version of Software Products (Red Sky Technologies, Inc. will also support the previous sequential release of the Software for a period of twelve (12) months): (i) Code Corrections - To supply code corrections to correct substantial deviations of unmodified Software Products from the then current applicable user documentation and/or software release notes delivered with Software Products ("Specifications"), (ii) Software Products Updates - To supply improvements, extensions and other changes to the Software Products which Red Sky Technologies, Inc., at its discretion, deems to be logical improvements or extensions, (iii) Hotline Support - To provide support service via telephone, FAX and E-Mail during Red Sky Technologies, Inc.'s normal business period of service during the hours of 7:30 AM to 7:00 PM, EST, Mon. - Fri., except Red Sky Technologies, Inc. holidays, (iv) Fixes - to supply workarounds for problems where known, answer questions and provide patches where they exist; and, (v) Technical Support - To supply a reasonable amount of assistance by mail or telephone in the event of difficulties in the use of the Software Products or the interpretation of results. If on-site assistance is required and the problem is the failure of the Software Products to perform to Specifications, no charge will be made. If the problem is due to other causes, Red Sky Technologies, Inc.'s professional services rates for such services will be applicable and payable by Licensee.

(b) RENEWAL; CHARGES FOR SUBSEQUENT YEARS. For each subsequent year after the first year maintenance term, Red Sky Technologies, Inc.'s obligation to provide maintenance and support services as described in subsection (a) and (b) above will continue and Licensee's obligation to pay the current Red Sky Technologies, Inc. maintenance and support charges then in effect, provided funding is available from current County funds and approved by the Williamson County Commissioners Court, shall be automatically renewed on either (i) the anniversary date of the first Software Product delivery hereunder or (ii) the consolidated Licensee annual renewal date (annual billing date) for all such maintenance and support services which is defined by Red Sky Technologies, Inc. for Licensee's Software Products and which is notified to Licensee in writing, unless either Red Sky Technologies, Inc. or Licensee has given the other prior written notice canceling Red Sky Technologies, Inc.'s maintenance and support as defined below. Within ninety (90) days prior to the expiration of Licensee's annual maintenance period, Red Sky Technologies, Inc. will provide notice of expiration and may review Licensee's installed Software Products to determine the actual quantity and type of Red Sky Technologies, Inc. licensed Software Products Licensee is using currently at the time.

(c) CANCELLATION; REINSTATEMENT. Licensee may cancel its subscription in the support plan(s) effective as of the next anniversary or consolidated annual renewal date by written notice to Red Sky Technologies, Inc. received prior to the next applicable (i) anniversary or (ii) Licensee annual renewal date, or if there is an increase in annual maintenance and support charges over the preceding year by giving Red Sky Technologies, Inc. written notice of cancellation within thirty (30) days of receipt of Red Sky Technologies, Inc.'s invoice or price quotation notice showing such increase.

Licensee may reinstate maintenance at a later time by paying the plan(s) fee in effect at the time of reinstatement plus a fee equal to the then current maintenance and support fees for the Software Products times the number of annual periods the subscription was interrupted or fifty percent (50%) of the license fee for the Software Products at the time the license was purchased, whichever is less.

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(d) SCOPE OF COVERAGE. Red Sky Technologies, Inc.'s maintenance support policy requires that (i) Licensee shall bring or keep all licensed Software Products it has acquired at an installation under current, contracted maintenance in order to receive the maintenance and update services defined in Sections 4(a) and (b) above.

(e) LIMITATIONS ON RED SKY TECHNOLOGIES, INC.'S OBLIGATIONS. Licensee understands and agrees that Red Sky Technologies, Inc. may develop and market new or different computer programs or features which use part or all of the Software Products and which perform all or part of the functions performed by the Software Products, including but not limited to releases of new software products or upgrades of the Software Products which include the such new product features and functionality. Nothing contained in this Agreement gives Licensee any rights with respect to such products, or such new or different computer programs or features.

5. LIMITED WARRANTY. Red Sky Technologies, Inc. warrants to Licensee that for a period of one (1) year from delivery of the Software Products by Red Sky Technologies, Inc. (the "Warranty Period"), the unmodified Software will be capable of operating substantially in conformance with the user documentation and software release notes in effect at the time of delivery of the Software Products. If, during the Warranty Period, it is determined that the Software Products do not operate according to such specifications due to Red Sky Technologies, Inc.'s fault, Red Sky Technologies, Inc. will undertake good faith efforts to cure the nonconformity. Licensee's only remedy in the event of a nonconformity in the Software, or for breach of any warranty is, at Red Sky Technologies, Inc.'s option, either (i) return of the price paid for the Software Products or (ii) repair or replacement of the Software. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, RED SKY TECHNOLOGIES, INC. MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE PRODUCT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

6. INDEMNITY. Red Sky Technologies, Inc. agrees to defend or at Red Sky Technologies, Inc.'s option settle any action or claim based upon a third party's claim of U.S. patent, copyright, or trade secret infringement asserted against Licensee by virtue of Licensee's use of the Software Products as delivered by Red Sky Technologies, Inc., provided that Red Sky Technologies, Inc. is given prompt notice of the action or claim and the right to control and direct the investigation, defense and settlement thereof, and further provided that Licensee shall reasonably cooperate with Red Sky Technologies, Inc. in connection with the foregoing. In addition to the foregoing, should Licensee's use of the Software Product, pursuant to its business, be enjoined due to actual or alleged infringement of any such patent, trademark, copyright, trade secret or other proprietary right of any third party, Red Sky Technologies, Inc. shall, at its sole option and expense, either (1) procure for Licensee the right to continue using the Software Product; (2) replace or modify such Software Product so it becomes non-infringing; or, (3) if Red Sky Technologies, Inc. does not procure the right to use, replace or modify the Software Product so that it is no longer infringing, return of the Software Product by Licensee and Red Sky Technologies, Inc. shall reimburse Licensee for the then depreciated value of the Software Product (5 year life, straight line method).

Notwithstanding the foregoing, Red Sky Technologies, Inc. will not be liable for a claim of infringement based on Licensee's (i) use of other than the latest unmodified release of the Software Products available to Licensee, (ii) use or combination of the Software Products with non-Red Sky Technologies, Inc. programs if infringement would not have occurred without the combination, and (iii) use of the Software Products after receiving notice of a claim that it infringes the rights of a third party. Notwithstanding anything contained in this Section 6 to the contrary, the maximum aggregate amount of liability of Red Sky Technologies, Inc., its officers, agents and employees for any claims or damages arising out of the matters described herein shall be limited to the amounts set forth in Section 7 of this Agreement.

7. LIMITATIONS OF LIABILITY. Should Licensee, any party claiming through Licensee, or any party claiming to have in any way relied upon Red Sky Technologies, Inc.'s software products or services suffer any loss, damage, cost or expense from its use, operation or modification of the software products or services, then the maximum aggregate amount of liability of Red Sky Technologies, Inc., its officers, employees and agents shall be limited to the amount paid Red Sky Technologies, Inc. for the licensed software products, or services, that caused or allegedly caused such loss, damage, cost or expense. Red Sky Technologies, Inc. will not be liable for any loss, direct or indirect, incidental, including good will, special and consequential damages, which may arise from the unauthorized use, operation, or modification of the software products or services by Licensee. This Agreement shall not create any rights or benefits to parties other than Licensee except such rights as may be specifically called for herein.

8. NONDISCLOSURE OF SOFTWARE PRODUCTS. Licensee acknowledges that the Software Products contain proprietary information. Licensee will take reasonable steps to ensure that the Software Products shall not be reproduced or disclosed to others in whole or in part, without the prior written permission of Red Sky Technologies, Inc.. Such prohibition on disclosure shall not apply to disclosures by Licensee to its agents, contractors or employees provided such disclosures are reasonably necessary to Licensee's authorized use of the Software Products, and provided further that Licensee shall take reasonable steps to ensure that the Software Products are not disclosed by

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Technologies, Inc.

its agents, contractors and employees in contravention of this Agreement. The contents of the Software Products are highly proprietary information of Red Sky Technologies, Inc. or of its licensors and Licensee agrees not to allow any machine readable or other version of the Software Products to be printed, listed, decompiled, disassembled or reverse engineered. Licensee will so advise all parties having access to the Software Products or the output of these restrictions. Red Sky Technologies, Inc. may not have an adequate remedy at law and injunctive or other equitable relief may be appropriate to restrain unauthorized use, reproduction, disclosure, printing, listing, decompilation, disassembly or reverse engineering. The obligations of this Section shall survive the expiration or termination of this Agreement.

9. TERMINATION.

(a) **TERMINATION BY RED SKY TECHNOLOGIES, INC..** Red Sky Technologies, Inc. has the right to terminate this Agreement without further obligation or liability (i) if Licensee is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of thirty (30) days after the last day on which such payment is due, (ii) Licensee commits any other breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Red Sky Technologies, Inc. of such breach; (iii) immediately, if Licensee violates Section 2.

(b) **LIQUIDATION OF RED SKY TECHNOLOGIES, INC..** If Red Sky Technologies, Inc. is liquidated, dissolved, or ceases to carry on business on a regular basis as pertains to the Software Products licensed by Red Sky Technologies, Inc. and Red Sky Technologies, Inc.'s obligations under this Agreement are not assumed by a successor or assignee, this Agreement may be terminated by Licensee with thirty (30) days written notice by Licensee.

(c) **DISPOSITION OF SOFTWARE PRODUCTS ON TERMINATION.** Upon termination of this Agreement or cancellation of the license hereunder for any reason, the license and all other rights granted to Licensee shall cease, and Licensee shall immediately (i) return the Software Products and all copies of documentation to Red Sky Technologies, Inc. or alternatively, provide written certification that all copies of the Software Products and documentation have been destroyed, (ii) purge all copies of the Software Products or any portion thereof from all computers and from any computer storage device or medium on which Licensee has placed or has permitted others to place the Software Products.

10. U.S. GOVERNMENT END USERS ("Government"). The Software and its related documentation are provided with "Restricted Rights" unless the Government agrees to other terms. Use, duplication or disclosure by the Government is subject to the restrictions set forth in FAR clause 52.227-14 (Alternate III) or FAR Clause 52.227-19. Unpublished--All Rights Reserved Under the Copyright Laws of the United States. Manufacturer/Contractor is Red Sky Technologies, Inc., 18877 W. Ten Mile Road, Suite 210, Southfield MI 48075.

11. EXPORT LAW CONTROLS; EXPORT ASSURANCE DECLARATION.

(a) Licensee agrees to comply with all export and re-export restrictions and regulations imposed by the governments of the United States or the country to which the Software Product is shipped to Licensee. Licensee will not commit any act or omission which will result in a breach of any such Export Requirements. Licensee agrees that it will comply in all respects with any governmental laws, orders or other restrictions on the export of Licensed copies of Red Sky Technologies, Inc. or its licensor's Software Product(s) (including any related information and documentation) which may be imposed from time to time by the government of the United States or the country to which the Red Sky Technologies, Inc. or its licensor's Software Product(s) is shipped by Red Sky Technologies, Inc. ("Export Requirements"). This Section 11 shall survive the expiration or termination of the license or this Agreement.

12. RED SKY TECHNOLOGIES, INC. PROFESSIONAL SERVICES. If ordered by Licensee on its Purchase Order, the following terms and conditions shall apply to professional services supplied by Red Sky Technologies, Inc. to Licensee.

(a) **Term of Professional Services.** The "Term of Professional Services" will begin and terminate on the dates or times defined in Licensee's Purchase Order and/or Quotation which has been accepted by an official of Red Sky Technologies, Inc. in writing, unless earlier terminated pursuant to paragraph 12(d) below.

(b) **Scope of Professional Services.** Red Sky Technologies, Inc. will perform the professional software support services defined in Licensee's Purchase Order and/or Quotation which is attached which has been accepted by an official of Red Sky Technologies, Inc. in writing ("Services") for the Term of Professional Services. The parties acknowledge that the scope of services provided hereunder consist solely of delivery of (i) Red Sky Technologies, Inc. Software installation, deployment assistance and/or non-formal Software training; (ii) additional Red Sky Technologies, Inc. copyright interface software or code; and/or (iii) operations process data, and that such software or

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Technologies, Inc.

Services provided to Licensee by Red Sky Technologies, Inc. shall not constitute works for hire. Licensee shall properly follow and implement software installation recommendations of Red Sky Technologies, Inc., its officers, agents and employees. No claims for loss, damage or injury shall be brought against Red Sky Technologies, Inc. by Licensee or any third party unless all such recommendations have been followed. Licensee agrees to indemnify and hold Red Sky Technologies, Inc., its officers, employees, and agents harmless from any and all claims, suits, losses, costs and expenses, including but not limited to, court costs and reasonable attorneys fees in the event that all such recommendations have not been followed.

(c) Fees and Expenses. Services are provided on a time and materials basis. Fees for Services are defined in Red Sky Technologies, Inc.'s Quotation or, where no Quotation is provided, fees shall be as stated in Red Sky Technologies, Inc.'s current, price list applicable for such Services. Fees and charges are due net thirty (30) days after date of invoice by Red Sky Technologies, Inc.. Invoices may be published on a monthly basis or at the completion of Services. Reasonable expenses for travel, food and lodging, directly related to the performance of Services, shall be paid by Licensee as reimbursable expenses. Licensee will be provided with appropriate documentation regarding expenses and may request prior approval. Licensee shall supply, or will reimburse Red Sky Technologies, Inc. for, all consumable supplies (e.g. media, tapes).

(d) Termination or delay of Professional Services. Licensee agrees that Services may be terminated by either party at any time for any reason, with or without cause, by giving ten (10) days prior written notice to the other party; termination shall be effective ten (10) days after the other party's receipt of notice. If Licensee delays start of contracted Services or terminates Services before the end of the services engagement in Licensee's Purchase Order, Licensee shall pay Red Sky Technologies, Inc. for Services completed prior to the effective termination date and reasonable and actual subcontractor costs incurred by Red Sky Technologies, Inc. as a result of such delay or termination.

(e) Red Sky Technologies, Inc. Proprietary Information. All Red Sky Technologies, Inc. "Proprietary Information" (defined below) and all title, patents, copyrights, trade secret rights any where in the world, and other intellectual property and rights in connection therewith shall be the sole property of and remain with Red Sky Technologies, Inc. or its licensors, as applicable. Red Sky Technologies, Inc. Proprietary Information includes, but is not limited to, Red Sky Technologies, Inc. E9-1-1ALI Information Management software and related documentation (the Software Products) and any modifications thereto developed in whole or in part by Red Sky Technologies. Except for the license use rights otherwise provided in this Agreement, no right, title or interest in Red Sky Technologies, Inc. Software Products is granted hereunder.

(f) Independent Contractors. Red Sky Technologies, Inc. is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations including, but not limited to Worker's Compensation Insurance. Nothing herein shall form or be construed to form a joint venture or partnership.

(g) Consent to Subcontract. Licensee hereby consents for Red Sky Technologies, Inc. to subcontract services to persons or companies qualified and certified by Red Sky Technologies, Inc. to provide services on Red Sky Technologies, Inc.'s behalf.

13. GENERAL.

(a) WAIVER, MODIFICATION, FORCE MAJEURE. The waiver, amendment or modification of this Agreement or any right hereunder shall not be effective unless made in writing and signed by the party against whom enforcement is sought. Neither party will be liable for delays in performance due to circumstances beyond its reasonable control.

(b) NOTICE. Any notice or other communication required or permitted hereunder shall be given in writing to the other party at the address stated on page one hereof or such other address as shall be given by one party to the other in writing. In the event of any conflict between the terms of this Agreement and those contained in any purchase order or quotation signed by the Parties hereto, the terms of this Agreement shall prevail.

(c) SUCCESSORS AND ASSIGNS. All terms and provisions of this Agreement shall be binding upon and inure for the benefit of the parties hereto, and their successors and assigns and legal representatives, except that Licensee may not assign this Agreement nor any right granted hereunder, in whole or in part without Red Sky Technologies, Inc.'s prior written consent. For purposes of this Agreement, assignment shall apply to change of control by and of Licensee.

(d) GOVERNING LAW; SEVERABILITY. This Agreement shall be governed by the laws of the State of Illinois, and the parties consent and submit to the jurisdiction and venue of the State and Federal Courts located in the State of Illinois. If any provisions of the Agreement or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall continue in

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full force and effect.

(e) CONFLICTS. In the event of any conflict between this Agreement and the conditions of any Licensee Purchase Order hereto, or any Quotation, the terms and conditions contained in this document shall control.

(f) ATTORNEY'S FEES. If either party is required to engage in any proceeding, legal or otherwise, to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and out of pocket expenses in addition to any other amounts due.

(g) BENEFICIARY. Red Sky Technologies, Inc.'s licensors of Software included in the Software Products are direct and intended third party beneficiaries of this Agreement and may enforce it directly against Licensee.

(h) ENTIRE AGREEMENT. The parties acknowledge that this Agreement expresses their entire understanding and agreement, and that there have been no warranties, representations, covenants or understandings made by either party to the other except such as are expressly set forth herein. Except as otherwise provided herein, this Agreement shall not be subject to change or modification except by execution of an other instrument in writing duly executed by both of the parties hereto.

Agreed To By:**Red Sky Technologies, Inc.**Signature: *Franklin J. Rademacher III*Printed Name: Franklin J. Rademacher IIITitle: VP, COODate: January 20, 2004**Licensee:****Williamson County**

Name: _____

Signature: *John C. Dreyer*Printed Name: John C. DreyerTitle: County JudgeDate: 2-10-04



Technologies, Inc.™

Master Software License and Services Agreement

Agreement No. 54624

Effective Date 1/16/2004

Williamson County having its principal place of business at 710 Main St., Georgetown TX 78626 (hereinafter "Licensee") and Red Sky Technologies, Inc., a Illinois corporation, with its place of business at 925 W. Chicago Ave, Chicago, IL 60622, USA (hereinafter "Red Sky Technologies, Inc."), by their execution hereof do hereby agree as follows:

1. DEFINITIONS.

(a) "Agreement" means these terms and conditions and any terms and conditions contained in any valid written outstanding price quotation made by Red Sky Technologies, Inc. to Licensee ("Quotation") as they apply to the ordering by Licensee, and licensing by Red Sky Technologies, Inc. to Licensee, of proprietary computer software products and/or the acquisition of related services from Red Sky Technologies, Inc. ®. More than one Licensee order may apply to or reference such terms and conditions.

(b) "PC or computer" means a computer device that is part of a network and which is connected to a Server which incorporates the object code licenses for the Software Product(s) for such device and on which the Software is used or is managed by.

(c) "Licensed Computers" is the networked set of Servers and Clients for which Licensee has purchased a Software Product license from Red Sky Technologies, Inc. for each Server and/or Client which the Software Product(s) is to be "used on or which is to be managed by it" (hereinafter "use" of the Software Products shall be construed to have the foregoing meaning).

(d) "Licensee" is the end-user customer defined in the Quotation and/or who has issued an accepted Purchase Order (defined below) and is the party who has purchased the license rights to use the Software Products as defined under the terms and conditions of this Agreement.

(e) "Purchase Order" is the written request to purchase the Software Product license rights herein or services hereto which has been provided by Avaya to Red Sky Technologies, Inc., either in the form of execution of a written Quotation hereof and/or a formal, written purchase order or similar documentation intended to achieve the same purpose, and which is acceptable to and has been accepted by Red Sky Technologies, Inc., either formally in writing by Red Sky Technologies, Inc. or by delivery to Licensee of Software Products or services thereto.

(f) Server is a computer that is a component of a network (a) which provides (i) shared services to workstations over a network, (ii) facilitates other stations, or (iii) handles the requests of a system or software at another site, and (b) which incorporates the object code licenses for the Software Product(s) for such device.

(g) "Software" is defined as the software component of the Software Product.

(i) "Software Product(s)" means one or more Red Sky Technologies, Inc. proprietary computer software programs, in object code format, and their related materials which include the user manuals, documentation, and software release notes associated with them and which products are listed in Red Sky Technologies, Inc.'s current commercial end user price list and/or Quotation, including updates, modifications or new releases of such software programs and documentation as may be provided by Red Sky Technologies, Inc. to Licensee from time to time. The specific products licensed hereunder are those product(s) specified in Licensee's Purchase Order and delivered to Licensee by Red Sky Technologies, Inc.

(j) "Stations" means the number of telephones that have been defined to Licensee's PBX or switch and shall determine the type and size of license purchased.

(k) "Private Branch Exchange (PBX)" or "switch" is the means by which the Licensee delivers telecommunications services. The number of PBX's shall determine the type and size of license purchased.

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2. LICENSE.

(a) **GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, Red Sky Technologies, Inc. grants Licensee a non-exclusive, non-transferable, personal license to use the Software Products.

(b) **SCOPE OF USE.** Licensee may use the Software Products only for Licensee's normal, internal business purposes. Licensee may install and use Software Products on Licensed Computers only in the maximum number of copies of each Software Product defined in Licensee's Purchase Order(s) and for which Licensee has paid the applicable license fee(s). Licensee may also make a reasonable number of copies of the Software in machine-readable form solely for archive or backup purposes in accordance with Licensee's standard archive or backup policies and procedures. Use of Software Products greater than the quantity of licenses paid for is prohibited and any such use will be subject to additional license fee(s).

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(e) **LICENSING BASED UPON NUMBER OF STATIONS, NUMBER OF SWITCHES.** Licensee may, as dictated by the number of stations purchased upon licensing, increase the number of stations to the station licensing threshold that was purchased. If the Licensee exceeds the number of stations that were originally licensed, Licensee must notify Red Sky Technologies of such condition and upgrade software licensing to accommodate for additional number of stations. Licensee may, as dictated by the number of switches or PBX's purchased upon licensing, increase the number of switches or PBX's to the PBX licensing threshold that was purchased. If the Licensee exceeds the number of switches or PBX's that were originally licensed Licensee must notify Red Sky Technologies of such condition and upgrade software licensing to accommodate additional number of PBX's. Failure to do so will cause software to not allow additional entries of stations or switches (PBX) and would cause incorrect recording and reporting of information.

(f) **TRANSFER OF LICENSE GRANT.** On written notice, Licensee may, with Red Sky Technologies, Inc.'s concurrence (which shall not be unreasonably withheld) transfer this license grant provided Licensee or transferee, directly or indirectly holds a majority interest, one in the other. As a condition of Red Sky Technologies, Inc.'s consent, transferee must assume, in writing, Licensee's obligations under this Agreement and Licensee remains liable hereunder. Under no condition will such transfer be permitted to a transferee or location outside of the country in which the Software Product(s) are initially licensed.

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4. MAINTENANCE AND SUPPORT PLANS.

(a) STANDARD MAINTENANCE AND SUPPORT PLAN. During the first 90 day period after delivery of the Software Products for which the applicable Software Product(s) license fee(s) has been paid by Licensee and/or during an annual maintenance period for which Licensee has subscribed to and paid for contracted annual maintenance at Red Sky Technologies, Inc.'s current Software Products' basic annual maintenance charges, Red Sky Technologies, Inc. will provide the following basic support of the current version of Software Products (Red Sky Technologies, Inc. will also support the previous sequential release of the Software for a period of twelve (12) months): (i) Code Corrections - To supply code corrections to correct substantial deviations of unmodified Software Products from the then current applicable user documentation and/or software release notes delivered with Software Products ("Specifications"), (ii) Software Products Updates - To supply improvements, extensions and other changes to the Software Products which Red Sky Technologies, Inc., at its discretion, deems to be logical improvements or extensions, (iii) Hotline Support - To provide support service via telephone, FAX and E-Mail during Red Sky Technologies, Inc.'s normal business period of service during the hours of 7:30 AM to 7:00 PM, EST, Mon. - Fri., except Red Sky Technologies, Inc. holidays, (iv) Fixes - to supply workarounds for problems where known, answer questions and provide patches where they exist; and, (v) Technical Support - To supply a reasonable amount of assistance by mail or telephone in the event of difficulties in the use of the Software Products or the interpretation of results. If on-site assistance is required and the problem is the failure of the Software Products to perform to Specifications, no charge will be made. If the problem is due to other causes, Red Sky Technologies, Inc.'s professional services rates for such services will be applicable and payable by Licensee.

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(e) LIMITATIONS ON RED SKY TECHNOLOGIES, INC.'S OBLIGATIONS. Licensee understands and agrees that Red Sky Technologies, Inc. may develop and market new or different computer programs or features which use part or all of the Software Products and which perform all or part of the functions performed by the Software Products, including but not limited to releases of new software products or upgrades of the Software Products which include the such new product features and functionality. Nothing contained in this Agreement gives Licensee any rights with respect to such products, or such new or different computer programs or features.

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(a) **TERMINATION BY RED SKY TECHNOLOGIES, INC..** Red Sky Technologies, Inc. has the right to terminate this Agreement without further obligation or liability (i) if Licensee is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of thirty (30) days after the last day on which such payment is due, (ii) Licensee commits any other breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Red Sky Technologies, Inc. of such breach; (iii) immediately, if Licensee violates Section 2.

(b) **LIQUIDATION OF RED SKY TECHNOLOGIES, INC..** If Red Sky Technologies, Inc. is liquidated, dissolved, or ceases to carry on business on a regular basis as pertains to the Software Products licensed by Red Sky Technologies, Inc. and Red Sky Technologies, Inc.'s obligations under this Agreement are not assumed by a successor or assignee, this Agreement may be terminated by Licensee with thirty (30) days written notice by Licensee.

(c) **DISPOSITION OF SOFTWARE PRODUCTS ON TERMINATION.** Upon termination of this Agreement or cancellation of the license hereunder for any reason, the license and all other rights granted to Licensee shall cease, and Licensee shall immediately (i) return the Software Products and all copies of documentation to Red Sky Technologies, Inc. or alternatively, provide written certification that all copies of the Software Products and documentation have been destroyed, (ii) purge all copies of the Software Products or any portion thereof from all computers and from any computer storage device or medium on which Licensee has placed or has permitted others to place the Software Products.

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12. RED SKY TECHNOLOGIES, INC. PROFESSIONAL SERVICES. If ordered by Licensee on its Purchase Order, the following terms and conditions shall apply to professional services supplied by Red Sky Technologies, Inc. to Licensee.

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(b) **Scope of Professional Services.** Red Sky Technologies, Inc. will perform the professional software support services defined in Licensee's Purchase Order and/or Quotation which is attached which has been accepted by an official of Red Sky Technologies, Inc. in writing ("Services") for the Term of Professional Services. The parties acknowledge that the scope of services provided hereunder consist solely of delivery of (i) Red Sky Technologies, Inc. Software installation, deployment assistance and/or non-formal Software training; (ii) additional Red Sky Technologies, Inc. copyright interface software or code; and/or (iii) operations process data, and that such software or

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(c) Fees and Expenses. Services are provided on a time and materials basis. Fees for Services are defined in Red Sky Technologies, Inc.'s Quotation or, where no Quotation is provided, fees shall be as stated in Red Sky Technologies, Inc.'s current, price list applicable for such Services. Fees and charges are due net thirty (30) days after date of invoice by Red Sky Technologies, Inc.. Invoices may be published on a monthly basis or at the completion of Services. Reasonable expenses for travel, food and lodging, directly related to the performance of Services, shall be paid by Licensee as reimbursable expenses. Licensee will be provided with appropriate documentation regarding expenses and may request prior approval. Licensee shall supply, or will reimburse Red Sky Technologies, Inc. for, all consumable supplies (e.g. media, tapes).

(d) Termination or delay of Professional Services. Licensee agrees that Services may be terminated by either party at any time for any reason, with or without cause, by giving ten (10) days prior written notice to the other party; termination shall be effective ten (10) days after the other party's receipt of notice. If Licensee delays start of contracted Services or terminates Services before the end of the services engagement in Licensee's Purchase Order, Licensee shall pay Red Sky Technologies, Inc. for Services completed prior to the effective termination date and reasonable and actual subcontractor costs incurred by Red Sky Technologies, Inc. as a result of such delay or termination.

(e) Red Sky Technologies, Inc. Proprietary Information. All Red Sky Technologies, Inc. "Proprietary Information" (defined below) and all title, patents, copyrights, trade secret rights any where in the world, and other intellectual property and rights in connection therewith shall be the sole property of and remain with Red Sky Technologies, Inc. or its licensors, as applicable. Red Sky Technologies, Inc. Proprietary Information includes, but is not limited to, Red Sky Technologies, Inc. E9-1-1ALL Information Management software and related documentation (the Software Products) and any modifications thereto developed in whole or in part by Red Sky Technologies. Except for the license use rights otherwise provided in this Agreement, no right, title or interest in Red Sky Technologies, Inc. Software Products is granted hereunder.

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(g) Consent to Subcontract. Licensee hereby consents for Red Sky Technologies, Inc. to subcontract services to persons or companies qualified and certified by Red Sky Technologies, Inc. to provide services on Red Sky Technologies, Inc.'s behalf.

13. GENERAL.

(a) WAIVER, MODIFICATION, FORCE MAJEURE. The waiver, amendment or modification of this Agreement or any right hereunder shall not be effective unless made in writing and signed by the party against whom enforcement is sought. Neither party will be liable for delays in performance due to circumstances beyond its reasonable control.

(b) NOTICE. Any notice or other communication required or permitted hereunder shall be given in writing to the other party at the address stated on page one hereof or such other address as shall be given by one party to the other in writing. In the event of any conflict between the terms of this Agreement and those contained in any purchase order or quotation signed by the Parties hereto, the terms of this Agreement shall prevail.

(c) SUCCESSORS AND ASSIGNS. All terms and provisions of this Agreement shall be binding upon and inure for the benefit of the parties hereto, and their successors and assigns and legal representatives, except that Licensee may not assign this Agreement nor any right granted hereunder, in whole or in part without Red Sky Technologies, Inc.'s prior written consent. For purposes of this Agreement, assignment shall apply to change of control by and of Licensee.

(d) GOVERNING LAW; SEVERABILITY. This Agreement shall be governed by the laws of the State of Illinois, and the parties consent and submit to the jurisdiction and venue of the State and Federal Courts located in the State of Illinois. If any provisions of the Agreement or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall continue in

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full force and effect.

(e) CONFLICTS. In the event of any conflict between this Agreement and the conditions of any Licensee Purchase Order hereto, or any Quotation, the terms and conditions contained in this document shall control.

(f) ATTORNEY'S FEES. If either party is required to engage in any proceeding, legal or otherwise, to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and out of pocket expenses in addition to any other amounts due.

(g) BENEFICIARY. Red Sky Technologies, Inc.'s licensors of Software included in the Software Products are direct and intended third party beneficiaries of this Agreement and may enforce it directly against Licensee.

(h) ENTIRE AGREEMENT. The parties acknowledge that this Agreement expresses their entire understanding and agreement, and that there have been no warranties, representations, covenants or understandings made by either party to the other except such as are expressly set forth herein. Except as otherwise provided herein, this Agreement shall not be subject to change or modification except by execution of an other instrument in writing duly executed by both of the parties hereto.

Agreed To By:**Red Sky Technologies, Inc.**Signature: *Franklin J. Rademacher III*Printed Name: Franklin J. Rademacher IIITitle: VP, COODate: January 20, 2004**Licensee:****Williamson County**

Name: _____

Signature: *John C. Doerflinger*Printed Name: John C. DoerflingerTitle: County JudgeDate: 2-10-04