

AGENDA ITEM 31

Discuss and take appropriate action on the Reconfiguration Planning and Negotiation Phase Agreement by and between Motorola and Williamson County.

Patrick Cobb, with EMS, addressed the Court.

Moved: **Commissioner Birkman**

Seconded: **Commissioner Limmer**

Motion: To approve the Reconfiguration Planning and Negotiation Phase Agreement by and between Motorola and Williamson County.

Vote: **4 – 0**

< Attachment >

Williamson County Commissioner's Court
301 SE Innerloop - Suite 109
Georgetown, TX 78626

AGENDA ITEM REQUEST FORM

All Items due the Tuesday at noon one week before scheduled court meeting.

Requesting Department Williamson County Attorney's Office

Date 5-2-06

Requested Agenda Date May 9, 2006

☐ Consent Agenda ☒ Regular Agenda

Agenda Item

1. Discuss the Reconfiguration Planning and Negotiation Phase Agreement by and between Motorola and Williamson County (EXECUTIVE SESSION as per VTCA Govt. Code sec 551.071 consultation with attorney).
2. Discuss and take appropriate action on the Reconfiguration Planning and Negotiation Phase Agreement by and between Motorola and Williamson County.

Requestor

Hal C. Hawes, Assistant County Attorney

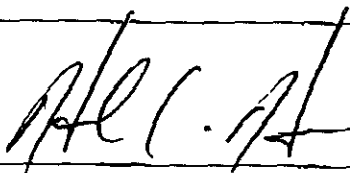
Contact Information

(512) 943-1107

Background Information

The Reconfiguration Planning and Negotiation Phase Agreement sets forth Motorola's agreement to provide reconfiguration and negotiation phase services related to Williamson County's relinquishment of existing licensed radio channels and its relocation to other licensed radio channels in order to avoid interference with Nextel's existing licensed radio channels. Payment for the services provided under this agreement shall come from Nextel.

County Attorney Approval (If Applicable)



Please print this form and either deliver in person to the County Judge's Office, or fax to: (512) 943- 1662.

Print Form

Reconfiguration Planning and Negotiation Phase Agreement

Motorola, Inc. ("Motorola") and Williamson County ("Licensee" or "Customer") enter into this Reconfiguration Planning and Negotiation Phase Agreement ("Agreement"), pursuant to which Licensee will purchase and Motorola will sell the Reconfiguration Planning and Negotiation Phase services described below. Motorola and Licensee may be referred to individually as a "Party" and collectively as the "Parties." This Agreement is made with reference to the following recitals.

A. On August 6, 2004, the FCC issued Report and Order FCC 04-168 that modified its rules governing the 800 MHz band to minimize harmful interference to public safety communications systems. On December 22, 2004, the FCC issued a Supplemental Order and Order on Reconsideration FCC 04-294. The August 6 and December 22, 2004 orders, and any supplemental orders the FCC issues after the Effective Date of this Agreement, are collectively referred to as the "Order."

B. Pursuant to the Order, certain licensees of 800 MHz channels used in public safety or other systems must relinquish their existing channels and relocate their systems to other licensed channels ("Replacement Channels"). Also pursuant to the Order Nextel must relinquish some of its existing channels and must provide and pay relocation funds ("Relocation Funds") to enable affected licensees to relocate their systems onto Replacement Channels and reconfigure their systems so that they are "Comparable Facilities" (as defined below). Relocation Funds are to be used to pay for the Licensee's rebanding costs, including reasonable transaction costs.

C. The FCC has appointed a Transition Administrator (as defined in the Order), who is subject to the review and oversight of the FCC, to ensure that the rebanding initiative proceeds on schedule and in a planned and coordinated manner so that disruption to a licensee's system is minimized. On April 21, 2005, the Transition Administrator published a "Reconfiguration Handbook" and a "Quick Reference Guide," both of which describe the administrative procedures the Transition Administrator will follow to administer the reconfiguration process (including Nextel's responsibility to pay the Relocation Funds). In the Reconfiguration Guidebook, which was amended on June 3, 2005, the two major phases to accomplish the reconfiguration are described as the "Reconfiguration Planning and Negotiation Phase" and the "Reconfiguration Implementation Phase."

D. Licensee is an affected licensee and has selected Motorola to provide Reconfiguration Planning and Negotiation Phase services.

For good and valuable consideration, the Parties agree as follows:

Section 1 DEFINITIONS

In addition to the defined terms above, capitalized terms in this Agreement have the following meanings:

1.1. "Comparable Facilities" means the Licensee's System (including the subscriber radio equipment) have the same operational capabilities that existed before relocation, specifically (1) equivalent channel capacity; (2) equivalent signaling capacity, baud rate, and access time; (3) coextensive geographical coverage; and (4) equivalent operating costs.

1.2. "Confidential Information" means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Agreement, any other agreement between the Parties or any applicable protective or similar order, in the receiving Party's possession without any obligation restricting disclosure; is independently developed by the receiving Party without breach of this Agreement; or is explicitly approved for release by written authorization of the disclosing Party.

1.3. "Contract Price" means the price for the selected Reconfiguration Planning and Negotiation Phase services, excluding any applicable sales or similar taxes.

1.4. "Customer Suitability Assessment" means the initial assessment services performed by Motorola (most likely in conjunction with performing an equipment inventory) to determine whether Licensee's System is suitable for updating using the Motorola Software that has been especially modified for purposes of the 800 MHz band reconfiguration. Depending on the needs of the Licensee, Motorola might perform a Customer Suitability Assessment for Motorola-manufactured infrastructure equipment and software, Motorola-manufactured subscriber equipment and software, or both.

1.5. "Effective Date" means that date upon which all Parties have executed it.

1.6. "Force Majeure" means an event, circumstance, or act of a third party (including Nextel and the Transition Administrator) that is beyond a Party's reasonable control. An act of God, the public enemy, a government entity, or another party (including another party's failure to comply with the Order); strikes or other labor disturbances; general unavailability of necessary materials; hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots are examples of a Force Majeure.

1.7. "Motorola Software" means software in object code format that Motorola or its affiliated company owns, including any releases or software kits to reprogram radios. This Agreement does not involve any source code.

1.8. "Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to any documents delivered by Motorola under this Agreement or any Motorola Software or equipment.

1.9. "Reconfiguration Planning and Negotiation Phase Services" means those services to be provided by Motorola to Licensee under this Agreement, including the Statement of Work (Attachment A).

1.10. "System" means the hardware and software products that comprise the Licensee's existing 800 MHz radio communications system.

Section 2 SCOPE OF PLANNING AND NEGOTIATION PHASE SERVICES

2.1. **SCOPE OF WORK.** The Parties will perform their respective contractual responsibilities in accordance with this Agreement. Any changes to this Agreement, including changes to the Statement of Work, must be in writing and executed by both Parties. This Agreement sets forth the Parties' rights and responsibilities with respect to each other concerning the agreed Reconfiguration Planning and Negotiation Phase activities only, and not the Reconfiguration Implementation Phase activities (which, if applicable, will be governed by a separate Reconfiguration Implementation Phase Agreement). Specifically, this Agreement does not involve the provision by Motorola of any hardware, software, or services to reconfigure the System or any part of it. Also, this Agreement sets forth the Parties' rights and responsibilities with respect to each other concerning only those Reconfiguration Planning and Negotiation Phase activities covered by the Order, and not the sale of products or services (or any other activities) that are not part of the 800 MHz Band Reconfiguration process. If the Parties wish to contract for these other activities, they will do so pursuant to a separate contract.

2.2. **MOTOROLA RESPONSIBILITIES.** Motorola will provide the Reconfiguration Planning and Negotiation Phase Services as described in Attachment A, "Statement of Work."

2.3. **LICENSEE RESPONSIBILITIES.** Under the Order, Licensee is ultimately responsible to perform or cause to be performed all of the Reconfiguration Planning and Negotiation Phase activities, and all of the Reconfiguration Implementation Phase activities, that are reasonable, necessary and prudent to make the Licensee's system Comparable Facilities. Licensee has selected Motorola to assist it in performing the Reconfiguration Planning and Negotiation Phase activities. At the appropriate time, Licensee will submit its Request for Planning Funding, any required certifications, and any amendments thereto (if applicable) to Nextel and the Transition Administrator. When Licensee submits its Request for Planning Funding to Nextel and the Transition Administrator, it will also submit the Statement of Work attached to this Agreement and the Contract Price information. Licensee will employ commercially reasonable

efforts to assist Motorola in its provision of the Reconfiguration Planning and Negotiation Phase services, including providing access to Licensee's equipment, facilities, personnel and relevant information. Licensee will designate a point of contact person. Licensee has sole responsibility to determine whether the Reconfiguration Planning and Negotiation Phase activities and the Reconfiguration Implementation Phase activities actually result in the Licensee's System satisfying the Comparable Facilities standard.

2.4. **LICENSEE-NEXTEL RELATIONSHIP.** The Reconfiguration Handbook indicates that the Licensee and Nextel will form a "Frequency Reconfiguration Agreement" which, among other things, sets forth Nextel's obligation to pay the Relocation Funds. The Reconfiguration Handbook encourages a payment process by which Nextel pays Relocation Funds directly to a Licensee's selected vendors. Licensee will ensure that the Frequency Reconfiguration Agreement provides for the direct payment by Nextel to Motorola. Promptly after execution of the Frequency Reconfiguration Agreement, Licensee will provide to Motorola a copy of those portions of the contract that pertain to Motorola's services, products, pricing and payment, including Attachment C to the Frequency Reconfiguration Agreement. At Motorola's request, that Attachment C will become an attachment to this Agreement as well.

2.5. **OTHER SERVICES.** Nothing in this Agreement is intended to prevent or hinder Motorola from contracting to perform or performing for Licensee any Reconfiguration Implementation Phase services, or any other kind of services, or selling any equipment or software. Nothing in this Agreement is intended to prevent or hinder Motorola from contracting to perform or performing for other Licensees Reconfiguration Planning and Negotiation Phase services, Reconfiguration Implementation Phase services, or any other kind of services, or selling any equipment or software.

Section 3 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in a reasonably diligent manner, taking into consideration the procedures and processes established in the Reconfiguration Handbook. The Parties acknowledge that any scheduled performance dates are estimates only, and various factors (such as resource availability, assistance from other parties, and product development) may cause the scheduled performance dates to change or be delayed. No Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party will notify the other if it becomes aware of a Force Majeure that will significantly delay performance. The notifying Party will give the notice promptly after it discovers the Force Majeure.

Section 4 CONTRACT PRICE, PAYMENT AND INVOICING

4.1. CONTRACT PRICE; NON-RECOURSE TO LICENSEE.

4.1.1. **Contract Price.** The Contract Price for Reconfiguration Planning and Negotiation Phase Services in U.S. dollars is the amount of \$70,018.35; this price is a firm, fixed price, subject to any changes to the Reconfiguration Planning and Negotiation Phase Services caused by mutually executed change orders. The Contract Price excludes any sales or other taxes, all of which will be added to the invoices and paid except as exempt by law. Motorola is responsible for federal, state, and local taxes based on its income or net worth. Payment that is overdue will bear simple interest at the rate of ten percent (10%) per annum from the due date.

4.1.2. **Payment Non-Recourse to Licensee.** Payment of the Contract Price (and any applicable taxes and interest for overdue payments) is to come from Nextel; therefore, this obligation is non-recourse to Licensee. If Nextel fails to pay Motorola, Licensee shall not be liable to pay Motorola the Contract Price (and applicable taxes or interest for overdue payments). Notwithstanding the above, if Nextel pays the Contract Price (and any applicable taxes and interest for overdue payments) to Licensee rather than to Motorola, Licensee will immediately forward the payment to Motorola. Motorola agrees to accept direct payments from Nextel if they are unconditionally made and if Nextel clearly identifies the applicable Motorola invoice. Motorola further agrees to apply these direct payments from Nextel to the Contract Price for Planning and Negotiation Phase Services.

4.1.3. **Motorola's Protections Concerning Payment by Nextel.** Licensee hereby assigns to Motorola all of Licensee's rights (including those under the Frequency Reconfiguration Agreement) to receive payment from Nextel for the Contract Price and any applicable taxes or interest for overdue payments as described in Section 4.1.1 of this Agreement; this assignment includes Licensee's rights to make a claim against the Letters of Credit that Nextel has obtained to secure its obligations to pay Relocation Funds. If requested by Motorola, Licensee will execute necessary

documents to effectuate this assignment provision and will take all such actions that are reasonable or necessary to promote the prompt payment by Nextel to Motorola. Motorola's obligation to commence or continue performance of the Reconfiguration Planning and Negotiation Phase Services is contingent upon Motorola's actual receipt from Nextel of all payments when due. If Nextel fails to make a payment when due or if Motorola reasonably believes that Nextel will fail to make a payment when due, then Motorola may stop some or all of the work upon written notice to Licensee. Either Motorola or Licensee may provide a copy of any stop work notice to Nextel and the Transition Administrator. If Motorola stops work under this provision, the Contract Price might be increased to cover the added costs attributable to stopping and re-starting the work.

4.2. INVOICING, PAYMENT MILESTONES, AND PAYMENT.

4.2.1. Invoicing. Motorola will submit correct invoices to Licensee, with a copy to Nextel, in accordance with the following payment milestones: 50% of the Contract Price on the Effective Date, and 50% of the Contract Price on completion of the Reconfiguration Planning and Negotiation Phase Services. Licensee's address for invoice purposes is: Licensee may change this address by written notice to Motorola. Upon receipt of an invoice, Licensee will promptly (but in no event longer than 7 calendar days) inspect the invoice, verify whether it correctly states the Contract Price and any applicable taxes, and notify Nextel in writing (via facsimile or priority overnight carrier) that Licensee approves the invoice and accepts the Reconfiguration Planning and Negotiation Phase Services milestone (the "Approval Notification"). Licensee will attach a copy of the invoice to the Approval Notification. When Licensee sends to Nextel the Approval Notification, Licensee will concurrently provide to Motorola a copy of the Approval Notification so that Motorola may know approximately when Nextel receives it. If for any reason Licensee disapproves the invoice, Licensee will give written notice to both Motorola and Nextel; the notice will explain the reasons for Licensee's disapproval. Motorola will promptly correct any inaccurate invoice that Licensee disapproves, and resubmit the corrected invoice using the same process as described above in this paragraph.

4.2.2. Payment Due Date. Payment to Motorola by Nextel for approved invoices is due thirty (30) days from the date Nextel receives the Approval Notification from Licensee. Payments will be made in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Motorola's Federal Tax Identification Number is 36-1115800.

4.2.3. Mutual Cooperation. Because payment for services will be made by Nextel, the payment process will require greater cooperation by the Parties than normal circumstances would require. The Parties will cooperate with each other and provide to each other, and to Nextel and the Transition Administrator, such information (other than Confidential Information, which is governed by Section 9.1) as is reasonable or necessary to facilitate the prompt payment of the Contract Price to Motorola.

Section 5 REPRESENTATIONS AND WARRANTIES

5.1. RECONFIGURATION PLANNING AND NEGOTIATION PHASE SERVICES WARRANTY. For thirty (30) days from the completion of the Reconfiguration Planning and Negotiation Phase Services, Motorola warrants that these services were performed in a good and workmanlike manner. This services warranty does not cover any services or duties performed or owed by Nextel, Licensee, or any other contractor hired by them, and it does not guaranty that Licensee's System will be Comparable Facilities after the reconfiguration work is completed.

5.2. WARRANTY CLAIMS. To assert a warranty claim, Licensee must notify Motorola in writing of the claim before the expiration of the warranty period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at no additional charge to Licensee) re-perform the Reconfiguration Planning and Negotiation Phase services. This action will be the full extent of Motorola's liability hereunder and constitutes Licensee's sole remedy. If this investigation indicates the warranty claim is invalid or "out of scope," then Motorola may invoice Licensee for responding to the claim on a time and materials basis using Motorola's then current labor rates. Notwithstanding any reimbursement claim Licensee may have against the Relocation Funds, Licensee will pay the invoice for invalid warranty claims within thirty (30) days from the invoice date.

5.3. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original end user and are not assignable or transferable.

5.4. **POTENTIAL DAMAGE TO EXISTING EQUIPMENT.** Licensee acknowledges that Motorola, Licensee's employees, or others might unintentionally cause damage to equipment that is part of Licensee's System when performing the Reconfiguration Planning and Negotiation Phase Services (the inventory, inspection or assessment services, etc.). Other than damage to equipment caused by Motorola's intentional wrong doing or gross negligence, Licensee bears this risk of damage to equipment (unless Motorola damages the equipment and the equipment is covered by a pre-existing Motorola warranty or maintenance agreement, in which case Motorola at its option will repair or replace the damaged equipment or refund its fair market value). If unintentional damage as described in this paragraph occurs and it is not covered by Motorola, Licensee should request that Nextel reimburse Licensee for the cost to repair or replace the damaged equipment.

5.5. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE RECONFIGURATION PLANNING AND NEGOTIATION PHASE SERVICES PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE FOREGOING WARRANTIES, THE SERVICES ARE PROVIDED "AS IS" AND MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE IS RESPONSIBLE FOR, AND MOTOROLA MAKES NO WARRANTY CONCERNING, THE BACK-UP AND DISASTER RECOVERY PROCEDURES, FACILITIES AND EQUIPMENT, OR DATA ENTRY AND LOADING. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

Section 6 DISPUTES

The Parties, through their respective project managers, will attempt to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality provisions) through consultation and good faith negotiation. The dispute will be escalated to appropriate higher level managers of the Parties, if necessary.

Section 7 DEFAULT AND TERMINATION

If a Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. The defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, to provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Licensee is the defaulting Party, Motorola may stop work on the Agreement until it approves the cure plan. If a defaulting Party fails to cure the default, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement and the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. The non-defaulting Party will mitigate damages.

Section 8 LIMITATION OF LIABILITY

Licensee acknowledges that the limitations in this Section are integral to the Contract Price being charged by Motorola under this Agreement, and that if Motorola assumed further liability other than as set forth in this Section 8, the Contract Price would be substantially higher. This limitation of liability provision applies notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, contribution, or otherwise, will be limited to the direct damages incurred by Licensee and recoverable under law, but not to exceed the Contract Price. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA (AND ITS SUBCONTRACTORS AND SUPPLIERS, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES) WILL NOT BE LIABLE TO LICENSEE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS, OPPORTUNITIES OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT (REGARDLESS OF THE FORM OF ACTION), THE SALE OR USE OF PRODUCTS, EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. ALL CLAIMS BY A PARTY AGAINST ANOTHER PARTY, WHETHER IN TORT, CONTRACT, STRICT**

LIABILITY OR OTHERWISE, MUST BE BROUGHT WITHIN TWO YEARS FROM THE DATE THE CAUSE OF ACTION ACCRUES. Some states do not allow the exclusion or limitation of implied warranties or limitation of liability for incidental or consequential damages, so the above limitations or exclusions may not apply in those states.

Section 9 CONFIDENTIALITY AND PROPRIETARY RIGHTS

9.1. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, the Parties may provide each other with Confidential Information. Any inventory report or Customer Suitability Assessment concerning Licensee's System, and any other document concerning the reconfiguration of Licensee's System that Motorola prepares specifically for and is a promised deliverable to Licensee under this Agreement (collectively, "Documentary Deliverable") shall be the Confidential Information of Licensee unless otherwise agreed by the Parties in writing.

9.1.1. **Non-Disclosure.** Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction or as required by the Texas Attorney General pursuant to the Texas Public Information Act; restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who have access to it that it is confidential and not to be disclosed to others, but those precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care. The confidentiality restrictions and obligations contained herein shall be in addition to any confidentiality restrictions or obligations contained in any other agreement (whether prior to, contemporaneous or subsequent to the date of this Agreement) between Motorola on the one hand and the Transition Administrator, Nextel or Licensee on the other hand, as well any protective order or confidentiality restrictions or rules issued by the FCC or the Transition Administrator.

9.1.2. **Use.** Unless otherwise provided in this Agreement, a Party may use the Confidential Information of the other Party only in furtherance of the performance of this Agreement or any other agreement between the Parties. Notwithstanding the preceding sentence, Motorola may use the information in any Documentary Deliverable for its own business purposes or to assist Licensee or its other contractors or consultants in the overall effort to plan and reconfigure Licensee's System. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement or any other agreement between the Parties.

9.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola owns and retains all of its Proprietary Rights, and nothing in this Agreement is intended to restrict its Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Licensee the services remain vested exclusively in Motorola, and this Agreement does not grant to Licensee any shared development rights of intellectual property. This Agreement does not involve the license of any software.

Section 10 GENERAL

10.1 **ASSIGNABILITY AND SUBCONTRACTING; WAIVER.** No Party may assign this Agreement without the prior written consent of the other Party. Motorola may subcontract any part of the work, but subcontracting will not relieve Motorola of its duties under this Agreement. Failure or delay by a Party to exercise a right or power under this Agreement will not be a waiver of the right or power. An effective waiver of a right or power must be in writing signed by the waiving Party and will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

10.2 **INDEPENDENT CONTRACTORS.** Each Party is an independent contractor with respect to the other Party, and a Party and its personnel will not be considered to be employees or agents of the other. Nothing in this Agreement grants a Party the right or authority to make commitments of any kind for the other Party. This Agreement will not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

10.3 INTERPRETATION OF AGREEMENT. This Agreement, including any attachments, constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to that subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of the Parties. The preprinted terms and conditions found on any Licensee purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs the document. The attachments are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement takes precedence over the attachments. Section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement is an arm's length transaction and will be fairly interpreted in accordance with its terms and conditions and not for or against a Party. If a court of competent jurisdiction renders any part of this Agreement to be invalid or otherwise unenforceable, it will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid part was not part of this Agreement. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the System is installed.

10.4. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with the Order and all other applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Licensee will obtain and comply with all FCC licenses and authorizations required for the installation, operation and use of the System.

10.5. AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party. Each Party represents that it is fully aware of the terms contained in this Agreement and has voluntarily and without coercion or duress of any kind entered into this Agreement, having had a full and fair opportunity to seek the advice of counsel and other professionals or consultants as it considers necessary. This Agreement may be executed in separate counterparts, which together constitute a single agreement.

10.6. SURVIVAL OF TERMS. The following provisions survive the expiration or termination of this Agreement for any reason: if any payment obligations exist, all of Section 4 (Contract Price, Payment and Invoicing); Section 6 (Disputes); Section 8 (Limitation of Liability); and Section 9 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 10.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola

Licensee *Williamson County*

By: _____
Name: _____
Title: _____
Date: _____

By: *John C. Dangler*
Name: *John C. Dangler*
Title: *County Judge*
Date: *5-12-06*

AGENDA ITEM 32

Comments from Commissioners.

Commissioner Birkman announced that her daughter is celebrating her eleventh birthday today.

COMMISSIONERS' COURT ADJOURNED AT 11:15 A.M. ON TUESDAY, MAY 16, 2006.