

# LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

**1. DATE OF PROPOSED ACTION:** April 2, 2013

**2. AGENDA ITEM:**    Appointments    Bids/Purchases    Claims

**Contracts/agreements/leases**    Grants    Land Use: Variances/Board App/Plats

Proclamations    Public Hearings/Rules & Reg's    Reports & Public Petitions

Resolutions    Other

**3. DEPARTMENT:** IT

**APPLICANT:** Red Sky Soutions

**AGENT:** Rick Fortney

**4. DESCRIPTION:** Consideration of an Agreement for Enhanced equipment "POE Data Switch's" for the planned VoIP and other Power over Ethernet equipment needs for the Laramie County Court House and shall not exceed \$108,455.60 (bid amount) approval of the RFP was previously approved by the Board of County Commissioners.

RECEIVED AND APPROVED AS  
TO FORM ONLY BY THE  
DEPUTY LARAMIE COUNTY  
ATTORNEY

**5. DOCUMENTATION:** 2 originals and (4) four copies

*[Signature]* 3/26/13

<u>Commissioner</u>	<u>Clerks Use Only:</u>
Ash _____	<u>Signatures</u>
Hasenauer _____	
Holmes _____	
Humphrey _____	Co Attny _____
Thompson _____	Assist Co Attny _____
Action _____	Grants Manager _____
Postponed/Tabled _____	Outside Agency _____

**AGREEMENT TO PROVIDE VOIP ENHANCEMENT EQUIPMENT**  
**between**  
**LARAMIE COUNTY, WYOMING AND RED SKY SOLUTIONS**

This Agreement is made and entered into by and between Laramie County, Wyoming, 310 W. 19th Street, Cheyenne, Wyoming, 82001 ("COUNTY") and Red SKY Solutions 8675 S. Sandy Parkway #110, Sandy, Utah 84070-6426 ("CONTRACTOR").

**I. PURPOSE**

The CONTRACTOR is to provide VOIP enhancement equipment (hereinafter referred to as Brocade Equipment) as requested in the RFP issued by the Laramie County Department of Information Technology, a copy of which is attached hereto and incorporated by reference herein.

**II. TERM**

This Agreement shall commence on the date last executed by the duly authorized representatives of the parties to this Agreement, and shall remain in force until equipment is delivered by CONTRACTOR and accepted by COUNTY as set forth in the Agreement.

**III. PAYMENT**

COUNTY shall pay CONTRACTOR for equipment upon receipt of the CONTRACTOR'S invoice to the COUNTY as detailed in the RFP, or submission of other documentation certifying deliverance and acceptance of the equipment. The total payment to CONTRACTOR under this Agreement shall not exceed \$108,455.60. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. § 16-6-602 (as amended).

**IV. RESPONSIBILITIES OF CONTRACTOR**

A. CONTRACTOR shall provide Brocade equipment as specified in the RFP and agreed to between the COUNTY and CONTRACTOR.

B. CONTRACTOR agrees to retain all required records for three (3) years after the County makes final payment and all other matters relating to the Agreement are concluded. CONTRACTOR agrees to permit access by the COUNTY or any of its duly authorized representatives to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this specific Agreement for purposes including but not limited to audit, examination, excerpts, and transcriptions

**V. GENERAL PROVISIONS**

A. Termination: This Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of this agreement; (b) by

either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

B. Entire Agreement: This Agreement (5 pages), and the attached RFP (9 pages) represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

C. Assignment: Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

D. Modification: This Agreement shall be modified only by a written agreement, duly executed by all parties hereto.

E. Invalidity: If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable.

F. Applicable Law and Venue: The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to CONTRACTOR and to COUNTY in executing this Agreement. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.

G. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this Agreement.

H. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement because of race, color, gender, creed, handicapping condition, or national origin.

I. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

J. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this Agreement. Further, COUNTY fully retains all immunities and defenses

provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement.

K. Indemnification: To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of CONTRACTOR for COUNTY except to the extent liability is caused by the sole negligence or willful misconduct of COUNTY or its employees. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision and provide COUNTY with proof of such insurance.

L. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to the Agreement, and shall inure solely to the benefit of the parties to this Agreement.

M. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.

N. Force Majeure: Neither party shall be liable to perform under this Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

O. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate this Agreement in order to acquire similar services from another party.

P. Notices: All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when

personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

Q. Compliance with Law: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

**[The remainder of this page is intentionally left blank]**

**VOIP ENHANCEMENT EQUIPMENT AGREEMENT  
LARAMIE COUNTY, WYOMING/RED SKY SOLUTIONS**

**Signature Page**

LARAMIE COUNTY, WYOMING

By: \_\_\_\_\_ Date \_\_\_\_\_  
Troy Thompson, Chairman, Laramie County Commissioners

ATTEST:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Debbye Lathrop, Laramie County Clerk

CONTRACTOR: Red SKY Solutions

By: \_\_\_\_\_ Date 2-27-13  
Name: John L. Ledge  
Title: President

This Agreement is effective the date of the last signature affixed to this page.

REVIEWED AND APPROVED AS TO FORM ONLY:

By: Sylvia Lee Hackl Date 3/11/13  
Sylvia Lee Hackl, Deputy County Attorney