

COMMISSIONERS JOURNAL NO. 51 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD JULY 10, 2008

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present: Glenn A. Evans, Kristopher W. Jordan, James D. Ward

PUBLIC COMMENT

RESOLUTION NO. 08-808

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD JULY 7, 2008 AS CONTAINED IN THE COUNTY’S OFFICIAL ELECTRONIC RECORDINGS OF THE PROCEEDINGS:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the resolutions and records of the proceedings from regular meeting held July 7, 2008 as contained in the county’s official electronic recordings of the proceedings.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-809

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0709:

It was moved by Mr. Evans, seconded by Mr. Ward to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0709, and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account</u>	<u>Amount</u>
PO's			
Juvenile Court	Moms Mentor Program	22411601-5348	\$ 10,000.00
Family & Children First	Help Me Grow	22411601-5348	\$ 10,000.00
Village Network	Residential Treatment	22511607-5342	\$ 400,000.00
Increases			
Liberty Comm Center	Day Care	22411610-5348	\$ 15,000.00
Village Network	Residential Treatment	22511607-5342	\$ 120,000.00
Vouchers			
Trident Group	Security	10011102-5301	\$ 7,887.84
Pomegranate Health Systems	Residential Treatment	22511607-5342	\$ 23,424.00
Kiddie Academy of Lewis Center	Day Care	22411610-5348	\$ 27,910.96
T & J Junior Academy	Day Care	22411610-5348	\$ 7,840.44
Blue's Auto	Vehicle Repair	60111901-5370	\$ 5,508.35
CEBCO	Insurance Premium	60211902-5370	\$ 791,722.50

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-810

IN THE MATTER OF ORDERING THE ENGINEER TO COMPLETE THE BASINGER DITCH IMPROVEMENT PROJECT BY FORCE ACCOUNT OR BY CONTRACT LET WITHOUT ADVERTISEMENT AND AWARDDING THE CONTRACT TO GLENN EXCAVATING:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the following:

WHEREAS, in Resolution No. 08-685, adopted on June 9, 2008, the Board of Commissioners of Delaware County, Ohio (the “Board”) found, pursuant to section 6131.44 of the Revised Code, that Page Excavating had failed to complete work on the improvements to the Basinger Ditch (the “Project”) within the time stated in the contract; and

WHEREAS, written notice of the finding was delivered via certified mail upon the sureties for the project; and

WHEREAS, the sureties have not given the Board written notice of their intention to enter upon the work and resume the construction thereof; and

WHEREAS, the estimated cost of completing the Project does not exceed four thousand dollars (\$4,000.00);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY, OHIO:

Section 1. Pursuant to section 6131.44 of the Revised Code, the Board hereby orders the Delaware County Engineer to complete the Project by force account or by a contract let without advertisement, the Board finding that the

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estimated cost of completing the Project does not exceed Four Thousand Dollars (\$4,000.00) and that, in the judgment of the Board, a saving can be effected thereby.

Section 2. The Board hereby awards a contract to Glenn Excavating, 533 Glenn Road, Delaware, Ohio 43015, in the amount of Two Thousand Four Hundred Ninety-Four Dollars and Seventy-Six Cents (\$2,494.76) for completion of the Project

Section 3. The Board also hereby awards a contract to Glenn Excavating in the amount of Two Thousand Four Hundred Thirty-One Dollars and Thirty-Seven Cents (\$2,431.37) for temporary seeding of specific properties affected by the delay of the Project.

Section 4. The Board hereby directs the Clerk of the Board to deliver a certified copy of this Resolution upon the sureties for the Project.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-811

IN THE MATTER OF ACCEPTANCE OF THE SANITARY SEWERS FOR NELSON FARMS SECTION 1, PHASE A PART 2:

It was moved by Mr. Evans, seconded by Mr. Ward to accept the sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

Nelson Farms Section 1, Phase A Part 2 1,175 feet of 8-inch sewer 5 manholes

Vote on Motion Mr. Ward Aye Mr. Jordan Aye Mr. Evans Aye

RESOLUTION NO. 08-812

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the following:

Recommendation to hire Blake Allen Jordan as a Staff Engineer I with the Sanitary Engineer’s Department; effective date July 14, 2008.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-813

IN THE MATTER OF OBTAINING MARKET UPDATES FOR THE DELAWARE COUNTY COMPENSATION MANAGEMENT SYSTEM FOR 2008:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the following:

Whereas, Commissioners’ Resolution 98-483 resolves that the Delaware County Compensation Management System be reviewed every eighteen (18) months, but no longer than every other year, and

Whereas, The Board of Commissioners of Delaware County is in need of a market review of the wage charts; to research regional and local market data of competitors to provide an analysis of fair wages for the County’s Compensation Management System wage scales taking into consideration the value of all current County benefits. The consultant will be responsible for reviewing and analyzing wages of competitive markets with similar County positions and will provide suggested recommendations for adjustments to the County’s wage charts. The consultant will also be responsible for evaluating the structure and integrity of the Compensation Management Plan and will make suggestions to modify and improve the system.

The project must be fully completed by September 8, 2008.

RFQ specifications must be obtained from Delaware County Human Resources during normal business hours (8:00 a.m.– 5:00 p.m.) or by calling (740) 833-2120.

Request for Qualifications (RFQ) will be received by Delaware County Human Resources, Delaware County, Ohio, 10 Court St. Delaware, Ohio 43015 no later than 5:00 p.m. on July 25, 2008.

The County reserves the right to reject any and all RFQ’s, in whole or in part, to waive any informality in any or all qualifications, to accept the RFQ it deems most favorable to the County after the RFQ’s have been examined and checked and subject to the approval of the County Commissioners.

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Now therefore be it resolved that the Board of County Commissioners authorizes the process to obtain a market study related to the County’s Compensation Management Plan.

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-814

IN THE MATTER OF APPROVING THE SECOND QUARTER REPORT FOR THE PRETRIAL SUPERVISION GRANT FOR ADULT COURT SERVICES :

It was moved by Mr. Evans, seconded by Mr. Ward to approve the following:

Grant #	2007-JG-C01-6270
Source:	Ohio Office of Criminal Justice Services
Grant Period:	January 1, 2008 to December 31, 2008
Federal Grant Amount:	\$ 40,000.00
Local Match:	<u>\$ 13,333.33</u>
Total Grant Amount:	\$ 53,333.33

The Grant funds a pretrial officer that supervises offenders that would otherwise remain in the Delaware County Jail. Offenders may be subject to drug testing

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-815

IN THE MATTER OF APPROVING THE AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND MOTOROLA, INC. FOR THE RECONFIGURATION PLANNING PHASE CONCERNING THE 800MHZ BAND:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the following:

Reconfiguration Planning Phase Agreement
(Planning Phase Services Only; No Equipment, Software, or Implementation Phase Services)

Motorola, Inc. (“Motorola”) and County Of Delaware, Ohio (“Licensee”), whose main address is 10 Court Street Delaware, OH 43015, enter into this Reconfiguration Planning Phase Agreement (“Agreement”), pursuant to which Licensee will purchase and Motorola will sell the Reconfiguration Planning 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, 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”); and 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).
- C. The FCC has appointed a Transition Administrator (“TA”) to assure that the rebanding initiative proceeds on schedule and in a planned and coordinated manner so that disruption to a licensee’s system is minimized. In the TA’s published “Reconfiguration Handbook,” the two major phases to accomplish the reconfiguration are described as the “Reconfiguration Planning Phase” and the “Reconfiguration Implementation Phase.”
- D. Licensee has selected Motorola to provide Reconfiguration Planning 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)

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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, of any other agreement between the Parties or of 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 Phase services, excluding any applicable sales or similar taxes.

1.4. “Customer Suitability Assessment” means the initial assessment services performed by Motorola to determine whether Licensee’s System (infrastructure) is suitable for updating using the Motorola Software that has been especially modified for purposes of the 800 MHz band reconfiguration.

1.5. “Effective Date” means that date upon which all Parties have executed this Agreement.

1.6. “Force Majeure” means an event, circumstance, or act of a third party (including Nextel and the TA) 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 Phase Services” means those services to be provided by Motorola to Licensee under this Agreement; these services are described in the Statement of Work.

1.10. “Statement of Work” means the description of the work to be performed under this Agreement by the Parties. The Statement of Work is set forth in Attachment A-2 and is incorporated herein by this reference.

1.11. “System” means the hardware and software products that comprise the Licensee’s existing 800 MHz radio communications system.

Section 2 SCOPE OF PLANNING 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 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 equipment, hardware, or software, or any services to reconfigure the System or any part of it. This Agreement sets forth the Parties’ rights and responsibilities with respect to each other concerning only those Reconfiguration Planning 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 Phase Services as described in the Statement of Work.

2.3. LICENSEE RESPONSIBILITIES. 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 TA. For the limited purpose of assisting Nextel and the TA to evaluate Licensee’s Request for Planning Funding, Motorola authorizes Licensee to (and Licensee will) provide to the TA and Nextel a copy of this Agreement, including the exhibits and pricing, but such information is and remains Motorola Confidential and Proprietary as provided below in Section 9. Licensee will employ reasonable efforts to assist Motorola in providing the Reconfiguration Planning Phase services, and will provide reasonable access to Licensee’s equipment, facilities, personnel and relevant

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information. Licensee will designate a point of contact person.

2.4. LICENSEE-NEXTEL RELATIONSHIP. The TA's Reconfiguration Handbook indicates that Licensee and Nextel will form a "Planning Funding Agreement" ("PFA") and/or a "Frequency Reconfiguration Agreement" ("FRA") 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 Licensee's selected vendors; and Licensee will ensure that its FRA provides for direct payment by Nextel to Motorola. Promptly after execution of the PFA and/or FRA, Licensee will provide to Motorola a copy of those portions of the PFA and/or FRA that pertain to Motorola's services, products, pricing and payment, including Attachment C thereto (redacted if necessary to exclude information not pertaining to Motorola).

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 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 Licensee's operational needs and resource availability) 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 Phase Services in U.S. dollars is **\$68,075.00**. 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.

4.1.2. Licensee Not Liable for Contract Price. Payment of the Contract Price and any applicable taxes is to come from Nextel, and not Licensee. If Nextel fails to pay Motorola, Licensee shall not be liable to pay Motorola the Contract Price or applicable taxes. Notwithstanding the above, if Nextel pays the Contract Price and any applicable taxes to Licensee rather than to Motorola, Licensee will immediately forward the payment to Motorola. Motorola agrees to accept direct payments from Nextel if Nextel clearly identifies the applicable Motorola invoice. Motorola further agrees to apply these direct payments from Nextel to the Contract Price.

4.1.3. Motorola's Protections Concerning Payment by Nextel. If requested by Motorola, Licensee will execute necessary documents and take all such actions that are reasonable or necessary to promote the prompt payment by Nextel to Motorola.

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 pre-approved payment milestones set forth as Attachment A-1. Licensee's contact person and address for invoice purposes are: _____. Licensee may change this contact person or address by written notice to Motorola. Upon receipt of an invoice, Licensee will promptly (but in no event longer than seven (7) calendar days) inspect the invoice, verify whether it correctly states the payment milestone, and notify Nextel in writing (via facsimile or priority overnight carrier) that Licensee approves the invoice and accepts the 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's project manager 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 promptly 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. Unless otherwise agreed between Nextel and Motorola, payment to Motorola for approved invoices is due thirty (30) days from the date Nextel receives the Approval Notification from Licensee. Motorola's Federal Tax Identification Number is 36-1115800.

4.2.3. Mutual Cooperation. 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

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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 PHASE SERVICES WARRANTY.** For thirty (30) days from the completion of the Reconfiguration Planning 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.

5.2. **WARRANTY CLAIMS.** To assert a warranty claim, Licensee must notify Motorola in writing of the claim before the date which is thirty (30) calendar days after 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 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 cause damage to equipment that is part of Licensee's System when performing the Reconfiguration Planning Phase Services, and that such damage may occur in the absence of negligence by any party. Motorola is not responsible for damage to equipment unless it is caused by Motorola's negligence, in which case Motorola at its option will repair or replace the damaged equipment or refund its fair market value. Before Licensee asserts a damage claim against Motorola under this section, it will first investigate the cause of the damage and the investigation must result in adequate proof that Motorola is negligent and liable for the damage. This provision does not diminish any rights Licensee might have under any pre-existing Motorola warranty or maintenance agreement.

5.5. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE RECONFIGURATION PLANNING 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 INDEMNIFICATION

6.1. **INDEMNITY BY MOTOROLA.** Motorola will defend at its expense and hold harmless Licensee against any claim, suit, demand, or cause of action brought by a third party against Licensee that is based on or to the extent it is caused by the negligence or willful misconduct of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, and which results in personal injury, death, or direct damage to tangible property ("Motorola Claim"). Motorola will indemnify Licensee from any liability, judgment, awards and damages resulting from a final award that arises from a Motorola Claim and pay all losses, expenses or direct damages incurred by Licensee associated with the Motorola Claim. The foregoing indemnity is conditioned on (i) Licensee giving Motorola prompt, written notice of any Motorola Claim, and providing to Motorola cooperation (and, if requested, reasonable assistance) in the defense of the Motorola Claim; and (ii) Motorola having sole control in the defense of the Motorola Claim and all negotiations for its settlement or compromise. Motorola will have no indemnity liability for the negligence or fault of Licensee, its other contractors, Nextel, or the TA, or any of their employees, agents or representatives. This section states the full extent of Motorola's general indemnification from liabilities that are in any way related to Motorola's performance under this Agreement.

6.2. **JOINT LIABILITY.** If a third party asserts a claim against both Parties, each Party will defend itself and will pay the claim to the extent of its percentage liability. For example, if the Parties have equal liability for the claim, they each will pay one-half of the amount plus their own defense costs.

Section 7 DISPUTES; DEFAULT AND TERMINATION

7.1. **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.

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7.2. **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 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 \$500,000. 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.

Section 9 CONFIDENTIALITY AND PROPRIETARY RIGHTS

9.1. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, the Parties may provide Confidential Information to each other. Any inventory report or Customer Suitability Assessment report 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. Subject to applicable public records laws, 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; 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 TA, Nextel or Licensee on the other hand, as well any protective order or confidentiality restrictions or rules issued by the FCC or the TA.

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. Except for a Documentary Deliverable, 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.

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Section 10 INSURANCE

During the term of performance of this Agreement, Motorola will maintain at its expense the following minimum Insurance:

- A. General Liability Coverage: Contractor shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence with an annual aggregate of not less than \$2,000,000.
- B. Automobile Liability Coverage: Contractor shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such coverage shall include coverage for owned, hired and non-owned automobiles.
- C. Workers' Compensation Coverage: Contractor shall maintain workers' compensation coverage as required by the laws of the State of Ohio.
- D. Additional Insureds: The County, its elected officials and employees, shall be named as additional insureds with respect to all activities under this Agreement in the policies required by Sections 10.A and 10.B above.
- E. Proof of Insurance: Upon execution of the Agreement and prior to the commencement of any work under this Agreement, Contractor shall furnish the County with properly executed certificates of insurance for all insurance required by this Agreement. Certificates of insurance shall provide that such insurance shall not be cancelled without thirty (30) days prior written notice to the County. Contractor will replace certificates for any insurance expiring prior to completion of work under this Agreement.

Section 11 GENERAL

11.1 **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.

11.2 **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.

11.3 **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. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

11.4 **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all 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.

11.5 **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

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other governing authority of the Party. Each Party represents that it is fully aware of the terms contained in this Agreement and has voluntarily entered into this Agreement, having had a full and fair opportunity to seek the advice of counsel and other professionals or consultants as its considers necessary. This Agreement may be executed in separate counterparts, which together constitute a single agreement.

11.6. 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 6 (Indemnification); Section 8 (Limitation of Liability); and Section 9 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 11.

Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-816

IN THE MATTER OF APPROVING THE AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND SPRINT NEXTEL CORPORATION FOR THE PLANNING FUNDING AGREEMENT FOR THE 800 MHZ RECONFIGURATION:

It was moved by Mr. Ward, seconded by Mr. Evans to approve the following:

This PLANNING FUNDING AGREEMENT ("Agreement") is made this 10TH day of July 2008, by and between Delaware County, a political subdivision of the state of Ohio ("Incumbent"), having an address of 10 Court Street, Delaware, OH 43015, and Nextel Operations, Inc., a wholly owned indirect subsidiary of Sprint Nextel Corporation, a Kansas corporation ("Nextel") having an address of 2001 Edmund Halley Drive, Reston, VA 20191. Nextel and Incumbent may be referred to collectively in this Agreement as the "Parties."

RECITALS:

A. On August 6, 2004, the Federal Communications Commission ("FCC") issued a report and order to reconfigure the frequency allocations in the 800 MHz band ("Reconfiguration"), including frequency allocations on which Incumbent and Nextel are currently authorized to operate (respectively, the "Incumbent Frequencies" and "Replacement Frequencies").

B. On December 22, 2004, the FCC issued a Supplemental Order and Order on Reconsideration. The August 6, 2004 and December 22, 2004 FCC orders, any binding actions issued by the Transition Administrator pursuant to its delegated authority under the orders ("Actions"), and any supplemental FCC orders in the Reconfiguration proceeding or subsequent Actions after the date of this Agreement, are collectively referred to as the "Order."

C. Pursuant to the Order, Nextel and Incumbent intend to enter into an 800 MHz Frequency Reconfiguration Agreement ("Reconfiguration Agreement") that will define the Parties' respective obligations regarding the Reconfiguration, including without limitation Nextel's obligation to pay for reasonable costs incurred in effecting the Reconfiguration.

AGREEMENT:

- a. **Planning Cost.** In order to facilitate negotiation of the Frequency Reconfiguration Agreement involving the license(s) for the Incumbent Frequencies granted by the FCC as identified in Schedule A (the "Incumbent Licenses") and in accordance with the work described in the Statement of Work attached to this Agreement as Schedule B, Nextel will pay the cost of the planning activities identified on Schedule C attached hereto ("Planning Cost") in an amount not to exceed the Planning Cost estimate set forth on Schedule C ("Planning Cost Estimate"). The Parties agree that Incumbent will initiate planning tasks that are not dependent upon Replacement Frequencies being assigned by the Transition Administrator ("Frequency Proposal Report" or "FPR"). Specifically, Incumbent will begin the planning tasks identified in Schedule B in the categories of System Inventory, Legal, and certain work in the category of Project Management (specifically limited to the preparation of the Request for Planning Funding) (collectively, "Pre-FPR Planning"). The Parties agree that all planning tasks delineated in Schedule B that require a FPR, including, but not limited to, the categories of frequency analysis, engineering/implementation planning, and Project Management for those tasks not specified above will be deferred until such time as: (i) the Border Frequency Treaty between the United States State Department and Canada has been amended and the FPR has been issued to Incumbent; and (ii) Nextel receives a copy of the FPR from Incumbent. Incumbent shall provide a copy of the FPR to Nextel within five (5) business days following Incumbent's receipt of the FPR ("Post-FPR Planning"). Incumbent shall send any such notices as required in this Section 1 to the individuals specified in Section 11, Notices. The Parties acknowledge that the Pre-FPR Planning identified in this Section 1 will begin upon execution by both Parties of this Agreement

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(“Agreement Execution”) and will be completed no later than 4.6 months following Agreement Execution. The remaining planning activities and deliverables that require a FPR will begin no earlier than Nextel’s receipt of the FPR and be completed no later than 4.6 months following Nextel’s receipt of the FPR.

2. Payment Terms.

- a. Subject to the terms and conditions herein, Nextel will make payments in accordance with the payment terms identified on Schedule C for both payments made directly to Incumbent and payments made on behalf of Incumbent directly to each third party vendor or service provider identified on Schedule C (“Planning Vendor”). Provided, however, in the event (i) Incumbent has not received a FPR from the Transition Administrator prior to the commencement of Post-FPR Planning by Incumbent and/or a Planning Vendor (as identified in Schedule B), and/or (ii) it becomes apparent to the Parties that Incumbent is not mandated pursuant to the Order to enter into a Reconfiguration Agreement following receipt by Incumbent of the FPR, Incumbent acknowledges and agrees that this Agreement is subject to termination by Nextel and any Planning Costs incurred for the Post-FPR Planning that are subsequently determined to have been unnecessary and unreasonably incurred will be subject to nonpayment by Nextel. Nothing in this Section shall restrict or prevent either Party from resolving any disputes related to this Section in accordance with the terms of this Agreement.
- b. Incumbent shall neither approve nor submit to Nextel any internal labor or Planning Vendor invoices for Post-FPR Planning until Nextel’s receipt of the FPR.

3. **Confidentiality.** The terms of this Agreement and any proprietary, non-public information regarding the Incumbent Frequencies, Replacement Frequencies, Nextel’s business and Incumbent’s business must be kept confidential by the Parties and their employees, shareholders, agents, attorneys and accountants (collectively, “Agents”), which confidentiality will survive final payment or termination of this Agreement for a period of two (2) years. The Parties may make disclosures as required by law and to the Transition Administrator and to a Planning Vendor [but only to the extent that such disclosure specifically relates to that Planning Vendor’s work and costs under this Agreement (as identified on Schedule C)] as required to perform obligations under this Agreement, provided, however, that each Party will cause all of its Agents to honor the provisions of this Section. Nextel, Incumbent and their respective Agents may make disclosures regarding the terms of this Agreement to other public safety licensees and their Agents. Each party involved in such disclosures shall cause all of its Agents to confine the disclosure of the terms of this Agreement to only public safety licensees and will advise the party to whom the disclosure was made, to limit further disclosure to only public safety licensees in accordance with the FCC Order, WT Docket No. 02-55, adopted January 8, 2007.

4. **Review Rights.** In order to enable the Transition Administrator to comply with its audit obligations under the Order, Incumbent agrees to maintain records and other audit-level supporting evidence related to the costs that Incumbent has expended in connection with planning activities related to the Reconfiguration and that Nextel has paid or will pay to Incumbent pursuant to this Agreement. Incumbent agrees to maintain such records and make them reasonably available to the Transition Administrator for review or reproduction until twenty-four (24) months after Closing, as defined in Section 7, or for a longer period if Incumbent, for its own purposes, retains such records for a longer period of time. As used in this provision, “records” includes books, documents, accounting procedures and practices and other data regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form.

5. **Changes.** If either Party believes that a change to the planning activities contemplated by the Planning Cost Estimate is required (including changes by Planning Vendors), such Party will promptly notify the other Party in writing. Such written notice (the “Planning Funding Change Notice”) shall set forth (i) a description of the scope of the change believed to be necessary and (ii) an estimate of any increase or decrease in the Planning Cost Estimate and in the time required to finish planning for the reconfiguration of Incumbent’s existing facilities. A Party receiving a Planning Funding Change Notice shall immediately perform its own analysis of the need for and scope of the change and its impact on the Planning Cost Estimate and schedule and negotiate the change in good faith with the other Party. After the Parties have agreed upon a change to this Agreement, they shall prepare a proposed amendment to this Agreement pursuant to Section 13 and submit to the Transition Administrator a copy of the proposed amendment together with a written request for its approval. Such request shall be accompanied by reasonable documentation supporting the need for and scope of the change and any proposed increase or decrease in the Planning Cost Estimate and in the time required to finish planning for the reconfiguration of Incumbent’s existing facilities. Incumbent is responsible for all changes necessary as it relates to work performed by a Planning Vendor on behalf of Incumbent. No change to the Planning Cost

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Estimate, the planning activities contemplated by the Planning Cost Estimate or the time required to finish planning for the Reconfiguration of Incumbent's existing facilities shall become effective until the Transition Administrator has approved the change in writing and both Parties have signed an amendment incorporating such approved change into this Agreement pursuant to Section 13.

6. **Disputes.** The Parties agree that any dispute related to Nextel's obligation to pay the cost of any planning activities related to the Reconfiguration of Incumbent's system contemplated by this Agreement, which is not resolved by mutual agreement, shall be resolved in accordance with the dispute resolution provisions of the Order, as it may be amended from time to time.
7. **Closing.** The closing ("Closing") of the transactions contemplated by this Agreement will take place after delivery by Incumbent to Nextel of: (i) all receipts, invoices and other documentation required to substantiate the actual costs of the planning activities contemplated by the Planning Cost Estimate ("Actual Planning Costs"), and other documents required to complete the Reconciliation similar to those identified on Exhibit 2; and (ii) a copy of all deliverables required to be delivered pursuant to the Statement of Work. Prior to Closing, Incumbent will submit to Nextel all Documentation (as defined in this Section) demonstrating the Actual Planning Costs. The Documentation required by Nextel from Incumbent may include but is not limited to the following: (A) invoices for Actual Planning Costs that are associated with a category of work as identified on Schedule C; (B) receipts substantiating the Actual Planning Costs including receipts for any travel expenses incurred by Incumbent such as hotel invoices, airfare receipts, etc.; (C) Incumbent's individual employee work orders, time sheets and associated general ledger records specifying the name of the person or employee performing work for Incumbent, the date work was performed, the hours worked and a description of the activity performed; (D) the applicable Exhibit 2 internal labor certifications. Upon receipt by Nextel of Documentation of the Actual Planning Costs, Nextel and Incumbent will reconcile the Actual Planning Costs against the payments made by Nextel to Incumbent pursuant to this Agreement and the Parties will agree upon the amount of any additional payments due to Incumbent or any refunds due to Nextel.
8. **Reconciliation.** The effective date of agreement on reconciliation of the Actual Planning Costs and signing of the Closing documents by both Parties is considered the "Planning Funding Reconciliation Date." Any additional payments due to Incumbent from Nextel will be disbursed to Incumbent within thirty (30) days of the Planning Funding Reconciliation Date, provided the additional payments do not result from Actual Planning Costs that exceed the Planning Cost Estimate. Any refunds due to Nextel from Incumbent will be made within thirty (30) days of the Planning Funding Reconciliation Date. In the event of termination by Nextel pursuant to Section 2(a), any refunds due to Nextel from Incumbent of any Planning Costs paid to or on behalf of Incumbent will be made within thirty (30) days following the date of termination. In the event Incumbent's Actual Planning Costs exceed the Planning Cost Estimate, Incumbent must submit a Planning Funding Change Notice pursuant to Section 5 of this Agreement describing the change in scope of work that resulted in Incumbent's Actual Planning Costs exceeding the Planning Cost Estimate. Approval of any Planning Funding Change Notice will not be automatic but will be processed in accordance with Section 5 of this Agreement. Additional payments due to Incumbent, which result from an excess of Actual Planning Costs over the Planning Cost Estimate, as agreed on the Planning Funding Reconciliation Date, will be disbursed to Incumbent within thirty (30) days of the Transition Administrator's approval of a Planning Funding Change Notice and execution by both Parties of an amendment incorporating such approved change into this Agreement pursuant to paragraph 13.
9. **Vendor Performance Issues:** Incumbent will select and contract directly with any vendor or service provider performing the planning activities. Neither the Transition Administrator nor Nextel will be responsible for, or assume the risk of any failure of that Planning Vendor to perform its obligations under any contract entered into between Incumbent and such Planning Vendor in connection with this Agreement.
10. **Termination.** This Agreement may be terminated and the transactions contemplated by this Agreement abandoned: (i) by mutual consent of the Parties provided in writing; (ii) by Nextel pursuant to Section 2(a) of this Agreement following written notice to Incumbent; (iii) for cause by either Party upon material breach of the other Party, following a thirty (30) day period for cure by the breaching Party following written notice of the breach or (iv) by Nextel in the event of any Adverse Decision by any governmental entity of competent jurisdiction affecting the Order. For purposes of this Agreement, an "Adverse Decision" means an order, decree, opinion, report or any other form of decision by a governmental entity of competent jurisdiction that results, in whole or part, in a stay, remand, or reversal of the Order, or otherwise in any revision to the Order that Nextel determines, in its sole discretion, to be adverse to its interests. In the event of termination due to an Adverse Decision, Nextel will pay Incumbent for all costs incurred up to the date of termination.

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11. **Notices:** All notices and other communications under this Agreement must be in writing and will be deemed given (i) the same day if delivered personally or sent by facsimile; (ii) the next business day if sent by overnight delivery via a reliable express delivery service; or (iii) after five (5) business days if sent by certified mail, return receipt requested, postage prepaid. All notices are to be delivered to the Parties at the following addresses:

<p>If to Incumbent, to:</p> <p>Delaware County Emergency Services Attn: Dave Cannon, County Administrator 10 Court St. Delaware, OH 43015</p>	<p>If to Nextel, to:</p> <p>Nextel Operations, Inc. c/o Sprint Nextel Corporation 2000 Edmund Halley Drive Reston, VA 20191 Attn: Heather P. Brown, Esq. Phone: (703) 433-4467 Fax: (703) 433-4483</p> <p>With a copy that shall not constitute Notice:</p> <p>Sprint Nextel Corporation 6575 The Corners Parkway Norcross, GA 30092 Attn: William M. Jenkins, VP Spectrum Resources Phone: (770) 326-7484 Fax: (678) 405-8252</p>
	<p>And a copy that shall not constitute Notice to:</p> <p>Sprint Nextel Corporation Attn: Rob Easton, Director, Spectrum Development 114 Coronation Circle Bountiful, UT 84010 Fax: (801) 296-6556 Phone: (801) 294-4810</p>

12. **Assignment:** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns. Either Party may assign this Agreement to any direct or indirect subsidiary or affiliate of the Party, upon delivery of written notice to the other Party.
13. **Amendments:** This Agreement, including without limitation the scope of the planning activities contemplated hereby and the Planning Cost Estimate thereof to be paid by Nextel, may be amended or modified only by a written instrument signed by authorized representatives of both Parties, provided, however, no amendment or modification to this Agreement shall become effective until approved by the Transition Administrator.
14. **Benefits:** This Agreement is for the benefit of the Parties and their successors and permitted assigns, and nothing in this Agreement gives or should be construed to give any legal or equitable rights under this Agreement to any person or entity, other than (i) the successors and assigns of the Parties, and (ii) the Transition Administrator as specifically provided for in Sections 3, 4, 5, 8, 9 and 13.
15. **Miscellaneous:** If any provision(s) of this Agreement is held in whole or part, to be invalid, void or unlawful by any administrative agency or court of competent jurisdiction, then such provision(s) will be deemed severable from the remainder of this Agreement, will in no way affect, impair or invalidate any other provision contained in the Agreement and the Parties will use their commercially reasonable efforts to amend this Agreement to make the unlawful provision compliant with applicable law so as to preserve the rights and obligations of the Parties. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement, together with the Schedules, constitutes the entire understanding and agreement between the Parties concerning the subject matter of this

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Agreement, and supersedes all prior oral or written agreements or understandings. This Agreement is governed by the laws of the state of Ohio without regard to conflicts of law principles thereof. This Agreement may be executed in one or more counterparts, including by facsimile, which will be effective as original agreements of the Parties executing the counterpart.

16. **Authority to Contract:** Incumbent has the authority to enter into this Agreement on behalf of the City of Powell, Ohio, as evidenced by the Intergovernmental Agreement, which is attached as Exhibit 3 hereto.

In consideration of the mutual consideration set forth herein, this Agreement is effective as a legally binding agreement between the Parties upon execution by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Vote on Motion: Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye

RESOLUTION NO. 08-817

IN THE MATTER OF APPROVING AN AMENDMENT TO RESOLUTION 08-484 (APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY COMMISSIONERS AND EATON ELECTRICAL INC. FOR THE UNINTERRUPTIBLE POWER SYSTEM FOR THE 911 CENTER AND THE PRIME TOWER SITE) TO INCLUDE ONLY THE PRIME TOWER SITE:

It was moved by Mr. Evans, seconded by Mr. Ward to approve An Amendment To Resolution 08-484 (Approving An Agreement Between The Delaware County Commissioners And Eaton Electrical Inc. For The Uninterruptible Power System For The 911 Center And The Prime Tower Site) To Include Only The Prime Tower Site.

(A copy of the contract is available in the Commissioners Office until no longer of administrative value).

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-818

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT, EMPLOYMENT, DISMISSAL, DISCIPLINE, PROMOTION, DEMOTION OR COMPENSATION OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; PENDING OR IMMINENT LITIGATION AND FOR LAND ACQUISITION:

It was moved by Mr. Jordan, seconded by Mr. Ward to adjourn into Executive Session at 10:03AM.

Vote on Motion Mr. Evans Aye Mr. Jordan Aye Mr. Ward Aye

RESOLUTION NO. 08-819

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Ward, seconded by Mr. Evans to adjourn out of Executive Session at 12:05AM.

Vote on Motion Mr. Jordan Absent Mr. Evans Aye Mr. Ward Aye

There being no further business, the meeting adjourned.

Glenn A. Evans

Kristopher W. Jordan

James D. Ward

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Letha George, Clerk to the Commissioners