

COMMISSIONERS JOURNAL NO. 51 - DELAWARE COUNTY
MINUTES FROM REGULAR MEETING HELD AUGUST 28, 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

DEBBIE SHATZER-CONVENTION AND VISITOR’S BUREAU PRESENTATION

RESOLUTION NO. 08-1033

IN THE MATTER OF APPROVING THE RESOLUTIONS AND RECORDS OF THE PROCEEDINGS FROM REGULAR MEETING HELD AUGUST 25, 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 August 25, 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. 08-1034

IN THE MATTER OF APPROVING PURCHASE ORDERS, VOUCHERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0827 AND MEMO TRANSFERS IN BATCH NUMBERS MTAPR0827:

It was moved by Mr. Evans, seconded by Mr. Ward to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0827, memo transfers in batch numbers MTAPR0827 and Purchase Orders and Vouchers as listed below:

<u>Vendor</u>	<u>Description</u>	<u>Account Number</u>	<u>Amount</u>
PO's			
Schmidt Mechanical Inc.	Repairs/Willis Building	60111901-5370	\$ 15,056.78
Arron Woody	Adoption Expense	22511607-5350	\$ 6,500.00
Primrose School	Day Care	22411610-5348	\$ 10,000.00
Verizon	Maintenance Contract	21411306-5325	\$ 36,965.00
Increases			
Kindercare/10655 Sawmill	Day care	22411610-5348	\$ 30,000.00
Treasurer	Retainage	40411412-5410	\$ 48,000.00
Schmid	Willis Building	40411412-5410	\$ 14,500.00
Schilling Propane	Fuel	10011303-5338	\$ 5,000.00
2 K General	Willis Building General Trades	40411412-5410	\$ 157,052.00
Vouchers			
The Village Network	Residential Treatment	22511607-5342	\$ 6,085.30
The Village Network	Residential Treatment	22511607-5342	\$ 5,773.50
The Village Network	Residential Treatment	22511607-5342	\$ 8,775.00
Kohls Dept Store	School Clothing	22411602-5215	\$ 1,991.80
Kohls Dept Store	School Clothing	22411602-5215	\$ 1,246.50
Kohls Dept Store	School Clothing	22411602-5215	\$ 1,115.89
Kohls Dept Store	School Clothing	22411602-5215	\$ 1,217.40
Kohls Dept Store	School Clothing	22411602-5215	\$ 375.00
Ben Bro Enterprises	Sept. Bldg & Land Rental	10011105-5335	\$ 19,276.80
2 K General	Willis Building General Trades	40411412-5410	\$ 105,869.93
Scioto Mechanical	Willis Building Plumbing	40411412-5410	\$ 7,360.00
Simco	Willis Building Electric	40411412-5410	\$ 19,318.16
Aggressive Mechanical	Willis Building HVAC	40411412-5410	\$ 45,757.29
Accent Communications	Willis Building Phones	40411412-5410	\$ 21,029.00
Treasurer	Willis Building Retainage	40411412-5410	\$ 46,358.64
Beems BP	Fuel	10011106-5228	\$ 11,934.48
Dell Marketing	Network Switch Upgrade	20110105-5450	\$ 133,911.69
Vote on Motion Mr. Jordan Aye Mr. Evans Aye Mr. Ward Aye			

RESOLUTION NO. 08-1035

IN THE MATTER OF APPROVING A LIQUOR LICENSE TRANSFER REQUEST FROM FROM KENNEDYS RESTAURANT GROUP LLC. DBA KENNEDYS ON THE QUAYS TO JPC LLC DBA JCS PUB AND FORWARDING TO THE OHIO DIVISION OF LIQUOR CONTROL WITH NO

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OBJECTIONS AND NO REQUEST FOR A HEARING:

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

Whereas, the Ohio Division of Liquor Control has notified both the Delaware County Board of Commissioners and the Orange Township Trustees that JPC LLC DBA JCS Pub has requested the Transfer of the D5 and D6 permits from Kennedys Restaurant Group LLC. DBA Kennedys. Both businesses located at 1311 Cameron Ave Orange Township Lewis Center, Ohio 43035, and

Whereas, the Orange Township Trustees have stated they have no objection, the Delaware County Sheriff has responded--no known reason for a hearing to be requested and the Delaware County Commissioners have received no objections.

Therefore Be it Resolved, The Clerk of the Board shall complete the necessary forms and notify the Ohio Division of Liquor Control that no objections are made and no hearing is requested by this Board of County Commissioners.

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

RESOLUTION NO. 08-1036

IN THE MATTER OF APPROVING PERMANENT EASEMENTS, ESTABLISHING
MAINTENANCE ACCOUNTS AND APPROVING ASSESSMENTS FOR THE BASIGER #336
DITCH PROJECT:

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

RE: Basiger #336 Main ID# 0807 Final assessments, Drainage maintenance account and Drainage maintenance easement

Request to finalize the construction assessments, set up the drainage maintenance account with the following amount for the referenced project and approve the drainage maintenance easements. The following information may be used to initiate the account.

Name: Basiger #336 Main
Account: 0807
Organization: 21911401
Amount: \$1,364.65

Maintenance Easement Description: (Map available at Engineer’s Office)
In United States Military District Section 4, Township 4, Range 19 Liberty Township, Delaware County.
Commencing At The Entrance Of A 48” Culvert At The Railroad Right-Of-Way, Which Is Approximately 685’ South Of Bunty Station Raod And Terminating At The Entrance Of The Rock Chute Structure At The Case/Cameron Property Line.

Points A to B:
25 feet right of top right bank
25 feet left of top of left bank

Points B to C:
15 feet right of top right bank
25 feet left of top of left bank

Access Points A1 to A2:
15 feet east of property line
15 feet north of property line

RE: Basiger #336 Lateral A-1 ID# 0808 Final assessments, Drainage maintenance account and Drainage maintenance easement

Request to finalize the construction assessments, set up the drainage maintenance account with the following amount for the referenced project and set the drainage maintenance easements. The following information may be used to initiate the account.

Name: Basiger#336 Lateral A-1
Account: 0808
Organization: 21911401
Amount: \$5,791.31

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Maintenance Easement Description: (Map available at Engineer's Office)
In United States Military District Section 4, Township 4, Range 19 Liberty Township, Delaware County.
Commencing At The Entrance Of The Rock Chute Structure At The Case/Cameron Property Line And Terminating At The Exit Of The Road Culvert Located At the Edge Of The Liberty Township Right-Of-Way For Ford Road Near The Zimmer/Neff Property Line Approximately 1715' Of Bunty Station

Points A to B:
25 feet right of top right bank
25 feet left of top of left bank

Points B to C:
15 feet left of top left bank
25 feet right of main subsurface

RE: Basiger #336 Lateral A-2 ID# 0809 Final assessments, Drainage maintenance account and Drainage maintenance easement

Request to finalize the construction assessments, set up the drainage maintenance account with the following amount for the referenced project and set the drainage maintenance easements. The following information may be used to initiate the account.

Name: Basiger#336 Lateral A-2
Account: 0809
Organization: 21911401
Amount: \$3,520.37

Maintenance Easement Description: (Map available at Engineer's Office)
In United States Military District Section 4, Township 4, Range 19 Liberty Township, Delaware County.
Commencing At Point A At The Junction Of Lateral A-1 And Lateral A-2 Near The Case/Cameron Property Line And Terminating At The Exit Of The Road Culvert Located At The Edge Of The Liberty Township Right-Of-Way For Ford Road Approximately 325' South Of Bunty Station Road.

Points A to B:
25 feet right of right side subsurface drain
25 feet left of left side of subsurface drain

Points B to C:
10 feet right of subsurface drain
25 feet left of subsurface drain

Points C to D:
15 feet right of subsurface drain
15 feet left of subsurface drain

Access Points A1 to A2:
15 feet right of right edge of drive
15 feet left of edge of drive

RE: Basiger #336 Lateral B ID# 0810 Final assessments, Drainage maintenance account and Drainage maintenance easement

Request to finalize the construction assessments, set up the drainage maintenance account with the following amount for the referenced project and set the drainage maintenance easements. The following information may be used to initiate the account.

Name: Basiger#336 Lateral B
Account: 0810
Organization: 21911401
Amount: \$3,859.13

Maintenance Easement Description: (Map available at Engineer's Office)
In United States Military District Section 4, Township 4, Range 19 Liberty Township, Delaware County.
Commencing At A Point A At The Junction Of The Main Lateral B And Terminating At Point E On The Hurt Property.

Points A to B:

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25 feet right of top right bank
25 feet left of top of left bank

Points B to C:
40 feet right of subsurface drain
20 feet left of subsurface drain

Points C to D:
15 feet right of subsurface drain
20 feet left of subsurface drain

Points D to E:
20 feet right of subsurface drain
15 feet left of subsurface drain

Access Points A1 to A2, A3 to A4, A5 to A6, A7 to A8:
5 feet left of left edge of drive
15 feet right of right edge of drive

Access Points A9 to A10:
15 feet west of property line
15 feet south of property line

RE: Basiger #336 Lateral C ID# 0811 Final assessments, Drainage maintenance account and Drainage maintenance easement

Request to finalize the construction assessments, set up the drainage maintenance account with the following amount for the referenced project and set the drainage maintenance easements. The following information may be used to initiate the account.

Name: Basiger#336 Lateral C
Account: 0811
Organization: 21911401
Amount: \$246.44

Maintenance Easement Description: (Map available at Engineer’s Office)
In United States Military District Section 4, Township 4, Range 19 Liberty Township, Delaware County.
Commencing At Point A At The Junction Of The Main And Lateral C And Terminating At The Breather Of The Subsurface Drain Of The Jahr Property.

Points A to B:
15 feet right of subsurface drain
20 feet left of subsurface drain

WHEREAS, the above referenced project has been completed and the assessments for the affected property owners are available, and

WHEREAS, the interest rate of the bond for the borrowing of the money is approximately 4.5%.

THEREFORE BE IT RESOLVED, The Delaware County Commissioners approves the final schedule of construction assessments for the Basiger #336 ditch project. (Copy of assessment available in the Commissioner’s Office until no longer of administrative value).

FURTHER BE IT RESOLVED, that as this project came in under the estimate, some property owners who paid in advance are due a refund, in addition several property owners whose total cost is below the minimum \$10.00 requirement will be increased to meet that requirement.

FURTHER BE IT RESOLVED, THAT The Commissioners’ Office will supply to the Auditor’s Office the final schedule of construction assessments with the interest rates for the assessments. Eight years shall be the period of time, in semi-annual installments, as taxes are paid, given the owners of land benefited, to pay their assessments with the interest rate on the installments.

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

RESOLUTION NO. 08-1037

IN THE MATTER OF APPOINTING ELMER FORD AS THE DELAWARE BOARD OF COUNTY COMMISSIONERS’ REPRESENTATIVE TO THE DELAWARE COUNTY BOARD BUILDING APPEALS:

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

Whereas, The Board of Commissioners of Delaware County is responsible to make appointments from the public to various boards, councils and committees, and

Whereas, The Board of Commissioners of Delaware County shall appoint an individual to the Delaware County Board of Building Appeals. Elmer Ford shall be appointed for a five year term beginning August 28, 2008, and ending August 27, 2013, and

Therefore, be it resolved that the Board of Commissioners at Delaware County, State of Ohio, appoint Elmer Ford for a five year term beginning August 28, 2008 and ending August 27, 2013 to the Delaware County Board of Building Appeals.

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

RESOLUTION NO. 08-1038

IN THE MATTER OF AWARDING A CONTRACT FOR THE MARKET RESEARCH FOR PAY
SYSTEM ADJUSTMENT TO DOWNES, HURST AND FISHEL, LLP:

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

WHEREAS, the Board of County Commissioners is responsible for ensuring the integrity of the County’s Compensation Management System for the county offices and departments; and

WHEREAS, the Board of County Commissioners is committed to conducting the wage survey to determine the appropriate percentage of wage change, if any, in each job category when necessary

WHEREAS, The Human Resources Department has reviewed all proposals and recommends the project be awarded to Downes, Hurst and Fishel, LLC;

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners, Delaware County, State of Ohio, accepts the proposal from Downes, Hurst and Fishel, LLC. as specified below:

- A. Downes, Hurst and Fishel, LLC hourly rates include:
- Partner \$165.00 per hour
- Associate.....\$135.00 per hour
- Law Clerk.....\$85.00 per hour
- Administrative Staff.....\$45.00 per hour

BE IT FURTHER RESOLVED by the Board of Commissioners of Delaware County, State of Ohio, to execute an Agreement with Downes, Hurst and Fishel, LLC to provide services necessary for the Market Research for Pay Adjustment project at the aforementioned rates with the total cost not to exceed \$6,000.

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

RESOLUTION NO. 08-1039

IN THE MATTER OF APPROVING APPROPRIATIONS FOR THE WORKERS COMPENSATION
SELF INSURANCE FUND UNDER THE DEPARTMENT OF ADMINISTRATIVE SERVICES:

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

Supplemental Appropriations	Amount
61311923-5001 WC Self Insurance/Compensation	\$ 16,000.00
61311923-5101 WC Self Insurance/Health Insurance	\$ 5,000.00
61311923-5120 WC Self Insurance/PERS	\$ 2,500.00
61311923-5131 WC Self Insurance/Medicare	\$ 300.00
61311923-5301 WC Self Insurance/Contracted Profess. Services	\$ 13,600.00
61311923-5361 WC Self Insurance/Legal/Attorney Services	\$ 15,000.00
61311923-5370 WC Self Insurance/Insurance & Premium Claims	\$112,000.00
61311923-5380 WC Self Insurance/Other Services – CMI Deposit	\$ 30,000.00

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Total \$194,400.00

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

RESOLUTION NO. 08- 1040

IN THE MATTER OF AWARDING A CONTRACT TO DAKIN INSURANCE AGENCY,
INCORPORATED TO PROVIDE EXCESS WORKER’S COMPENSATION INSURANCE
COVERAGE THROUGH MIDWEST EMPLOYERS CASUALTY COMPANY:

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

WHEREAS, Delaware County has applied and been approved as self insured employer by the Bureau of Worker’s Compensation effective September 1, 2008.

WHEREAS, The Delaware County Board of Commissioners is in need of purchasing an insurance policy that would protect the County against excessive claims costs in its workers compensation self insurance program;

WHEREAS, The Delaware County Board of Commissioners accepted proposals from prospective insurance agents to provide excess insurance;

WHEREAS, the Board of County Commissioners selects Dakin Insurance Agency, Inc. to perform these services as a competent consultant; and

WHEREAS, Dakin Insurance Agency, Inc. has received a proposal on behalf of Delaware County from Midwest Employers Casualty Company, to provide an excess worker’s compensation insurance policy beginning September 1, 2008 through September 1, 2009.

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners, Delaware County, State of Ohio, accepts the proposal from Midwest Employers Casualty Company, as specified below, at the premium cost of \$44,485.00

A. The Midwest Employers Casualty Company coverage is as follows:

<u>Insurance Coverage</u>	<u>Limits</u>	<u>S.I.R.</u>
Per Accident Maximum	(Statutory)	\$450,000
Per Employee Maximum	(Statutory)	\$450,000

BE IT FURTHER RESOLVED, that the Board of Commissioners, Delaware County approve the purchase order and voucher for the premium payment of \$44,485.00 (61311923-5370) to Dakin Insurance Agency, Incorporated.

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

RESOLUTION NO. 08-1041

IN THE MATTER OF APPROVING PERSONNEL ACTIONS:

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

Douglas Mohl is resigning his position as a part-time Paramedic with the EMS Department; effective date September 8, 2008

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

RESOLUTION NO. 08-1042

IN THE MATTER OF APPROVING THE REVISED 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:

PLANNING FUNDING AGREEMENT
[800 MHZ RECONFIGURATION]

This PLANNING FUNDING AGREEMENT (“Agreement”) is made this 28TH day of AUGUST, 2008, by and between Delaware County, a political subdivision of the state of Ohio (“Incumbent”), having an address of 10

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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 ("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.

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- 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 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

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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) 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 (iii) 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.
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:

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<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 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.

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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.

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

RESOLUTION NO. 08-1043

IN THE MATTER OF APPROVING SUPPLEMENTAL APPROPRIATIONS:

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

Supplemental Appropriation			Amount	
10011102-5308	Commissioners General/Memberships	\$	30,000.00	
10022201-5001	Common Pleas Krueger/Compensation	\$	13,325.00	

Further Be It Resolved, that the Commissioners approve a Purchase Order Request and Memo Transfer to Regional Planning in the amount of \$30,000.00 (10011102-5308)

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

RESOLUTION NO. 08-1044

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; FOR PENDING OR IMMINENT LITIGATION AND FOR THE PURPOSE OF REVIEWING NEGOTIATIONS OR BARGAINING SESSIONS WITH PUBLIC EMPLOYEES CONCERNING THEIR COMPENSATION OR OTHER TERMS AND CONDITIONS OF THEIR EMPLOYMENT AND FOR LAND ACQUISITION:

It was moved by Mr. Jordan, seconded by Mr. Ward to adjourn into Executive Session at 10:30AM.

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

RESOLUTION NO. 08-1045

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Evans, seconded by Mr. Ward to adjourn out of Executive Session at 12:25PM.

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

There being no further business the meeting adjourned.

Glenn A. Evans

Kristopher W. Jordan

James D. Ward