



Revision to ASR and/or Exhibits/Attachments

Date: 12/14/07

To: Darlene J. Bloom, Clerk of the Board of Supervisors

CC: County Executive Office

From: Assistant Sheriff Steven Bishop *Steve Bishop*

RE: Agenda Item(s) # 31 for the 12/18/07 Board Meeting

ASR Control #(s): 07-002660

Subject: Equipment Frequency Reconfiguration Agreement with Nextel

Explanation:

The ASR was originally filed requesting authorization for the Sheriff to negotiate and execute the Frequency Reconfiguration Agreement with Nextel, and the draft agreement was an attachment to the ASR. The Sheriff-Coroner and Nextel have subsequently completed negotiations and the final agreement is attached to this memo for approval by the Board of Supervisors.

Revised Recommended Action(s)

Please replace Recommended Actions 1 through 3 with Recommended Actions 1 through 4 below:

1. Approve and authorize the Sheriff-Coroner or his designee to execute, on behalf of the County of Orange, a Frequency Reconfiguration Agreement between the County and Nextel to support the required FCC rebanding of the 800 MHz system.
2. Authorize the Sheriff-Coroner or his designee to negotiate and execute, on behalf of the County of Orange, with County Counsel's approval to form, amendments to the Frequency Reconfiguration Agreement and any necessary change orders to support the required FCC rebanding of the 800 MHz system, unless such amendments or change orders will result in a cost to the County that will not be reimbursed by Nextel.
3. Direct the Auditor-Controller to accept reimbursement from Nextel for County costs related to the Frequency Reconfiguration Agreement, estimated at \$250,000 or greater.
4. Authorize the Purchasing Agent to negotiate and issue a sole source agreement between the County and Motorola, Inc., with County Counsel's approval as to form, to provide frequency reconfiguration equipment and services in an amount of approximately \$3 million or greater, with reimbursement to be provided directly to Motorola, Inc. from Nextel.

Make modifications to the:

Subject Background Information Summary

Please replace the Summary with the following:

Under mandate by the Federal Communications Commission (FCC), the County of Orange, representing the 800 MHz Countywide Coordinated Communications System (CCCS) partnership, is obligated to reconfigure its 800 MHz frequencies to decrease cellular interference, with reimbursement for all related costs to be provided by Nextel. The Sheriff-Coroner requests approval of a Frequency Reconfiguration Agreement with Nextel; acceptance of approximately \$250,000 or more from Nextel as reimbursement for County costs for reconfiguration; and authorization for the Purchasing Agent to negotiate and issue an agreement with Motorola to provide reconfiguration equipment and services. Motorola's equipment and services, with an estimated cost of \$3 million or greater, will be funded by Nextel, with direct payments from Nextel to Motorola.

Please replace paragraph 4 of the Background Information with the following:

In order to expedite negotiations with Nextel and Motorola and to qualify for the early subscriber deployment program, the Sheriff-Coroner, on behalf of the County and its public safety partners, requests Board approval of the two-part Frequency Reconfiguration Agreement with Nextel, plus any amendments and change orders, and authorization for the Purchasing Agent to issue an agreement between the County and Motorola to provide reconfiguration services under the Frequency Reconfiguration Agreement. Any upgrades to the 800 MHz system or costs that will not be borne by Nextel will be brought to the Board for approval under separate agreement. .

Revised Exhibits/Attachments (attached)

Please replace Attachment A with the attached revised Agreement.

Additional Information and/or Correspondence (attached)

Please replace the Financial Impact with the following:

Pursuant to the attached Frequency Reconfiguration Agreement, Nextel will pay Motorola directly for costs of the agreement between Motorola and the County, and will pay the County directly for all County costs to implement FCC rebanding.

Please replace the Attachment A description as follows:

Attachment A: Subscriber Equipment Deployment Frequency Reconfiguration Agreement

**FREQUENCY RECONFIGURATION AGREEMENT
EARLY DEPLOYMENT SUBSCRIBER EQUIPMENT**

THIS FREQUENCY RECONFIGURATION AGREEMENT (this "Agreement") is made as of this ____ day of _____, 200__ ("Effective Date"), by and between the **County of Orange**, a political subdivision of the State of California ("Incumbent"), and **Nextel of California, Inc.** ("Nextel"), a wholly owned indirect subsidiary of Nextel Communications, Inc., a Delaware corporation (each is referred to in this Agreement as a "Party" and collectively as the "Parties").

RECITALS

- A. On August 6, 2004, the Federal Communications Commission ("FCC") issued a report and order that modified its rules governing the 800 MHz band. The purpose of the order was to reconfigure the 800 MHz band to minimize harmful interference to public safety radio communications systems in the band ("Reconfiguration").
- 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, Incumbent and Nextel are licensed on frequency allocations subject to Reconfiguration.
- D. Pursuant to the Order, Nextel will pay Incumbent an amount to effect a Reconfiguration of Incumbent's affected frequency allocations ("Reconfiguration Cost"). Incumbent will certify to the transition administrator appointed pursuant to the Order (the "Transition Administrator") that the Reconfiguration Cost is the minimum amount necessary to provide comparable facilities.
- E. The Parties acknowledge that the Reconfiguration Costs for Incumbent's infrastructure will be agreed upon after the Effective Date, such agreement to be documented by an amendment in accordance with the terms of this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. **Frequencies to be Reconfigured**: Incumbent is the licensee under the license(s) granted by the FCC identified in Schedule A (the "Incumbent Licenses") for the operation of certain 800 MHz frequencies at the locations identified on Schedule A (the "Incumbent Frequencies"). Nextel, including its subsidiaries or affiliates, is the licensee under license(s) granted by the FCC (the "Nextel Licenses") for the operation of Specialized Mobile Radio ("SMR") systems on the frequencies and at the locations identified in Schedule B (the "Replacement Frequencies"). Pursuant to the Order, Incumbent must relinquish the Incumbent Frequencies and relocate its system to the Replacement Frequencies. The Incumbent Frequencies as identified on Schedule A and the Replacement Frequencies as identified on Schedule B may be amended prior to the Closing Date (as defined below) once the Reconfiguration Costs for Incumbent's infrastructure are determined.

2. Frequency Reconfiguration Process:

(a) On or before the Closing Date (as defined below) (i) Nextel or Incumbent will cause the modification of the Incumbent Licenses to add the Replacement Frequencies or Nextel will cause the creation of a new FCC license for Incumbent that includes the Replacement Frequencies; (ii) Incumbent will cause the assignment of the Incumbent Frequencies to Nextel or will cause the deletion of the Incumbent Frequencies from the Incumbent Licenses following Reconfiguration of Incumbent's system; and (iii) Nextel will cause the modification and/or cancellation of the FCC licenses it holds for the operation of 800 MHz frequencies that are co-channels of the Replacement Frequencies, to the extent required to meet the technical short-spacing requirements of Section 90.621(b) of the FCC's Rules, 47 C.F.R. § 90.621(b) ("Section 90.621(b)"), as such rule may be amended from time to time by the FCC.

(b) The Parties agree that Nextel will make the FCC assignment filings for the Replacement Frequencies on a future date to be determined by the Parties through mutual agreement as provided in Section 5. The Incumbent reserves the right to make its own FCC filings for the Replacement Frequencies on such mutually agreed date, rather than relying on Nextel to do so, by so notifying Nextel in accordance with the Notice provision of this Agreement.

3. Reconfiguration Costs:

(a) Acknowledgement of Obligations. Incumbent agrees that:

(i) the cost estimate set forth in Schedule C (the "Cost Estimate"), and the equipment as identified in Schedule D may be amended prior to the Closing Date in accordance with Section 8 (Changes) and Section 26 (Amendment) to reflect the addition of costs and equipment associated with the reconfiguration of Incumbent's system;

(ii) after all of the work contemplated by the Cost Estimate, and Schedule D, as amended, has been performed in accordance with this Agreement and Nextel has paid all amounts required by this Agreement, the Incumbent's reconfigured system shall be deemed for all purposes of the Order to be "comparable" to Incumbent's existing system prior to Reconfiguration, and Nextel shall be deemed to have satisfied its obligations under the Order to pay the cost of relocating Incumbent's system from the Incumbent Frequencies to the Replacement Frequencies.

(b) Payment Terms. In order to facilitate the Incumbent's transition to the Replacement Frequencies, Nextel will pay the costs incurred to reconfigure Incumbent's system in an amount not to exceed the Cost Estimate. 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 service vendor identified on the Cost Estimate ("Vendor"). In addition to any items on Schedule C, Motorola, Inc. ("Motorola") will be providing Incumbent the equipment specifically identified on Schedule D as "Motorola Equipment" (the "Motorola Schedule D Equipment"). Incumbent will enter into a purchase commitment with Motorola for the Motorola Schedule D Equipment and any Motorola items listed on Schedule C within 30 business days from the Effective Date. Nextel and Motorola have entered into an agreement enabling Nextel to pay for the Motorola Equipment identified on Schedule D. Nextel will make payments directly to Motorola on behalf of Incumbent for the Motorola Schedule D Equipment and will make payments to Motorola as a "Vendor", as that term is used in this Agreement, for all Motorola costs identified on Schedule C. In order for Nextel to make payments to Motorola for the Motorola Schedule D Equipment, Incumbent will fax to Nextel a bill of lading associated with each shipment of Motorola Schedule D Equipment signed by an authorized representative of Incumbent acknowledging receipt of the Motorola Schedule D Equipment in good working order. Incumbent will be required to follow all Vendor related procedures identified in this Agreement for all Motorola Services and other Motorola costs identified on Schedule C.

(i) Prior to the Closing Date, Incumbent will submit to Nextel documentation (including without limitation invoices, receipts, and timesheets or equivalent documentation) demonstrating the actual costs that Incumbent reasonably incurred or paid to other entities to reconfigure Incumbent's system ("Actual Costs"). Upon receipt by Nextel of documentation of the Actual Costs, Nextel will issue a statement to Incumbent ("Reconciliation Statement") and Nextel and Incumbent will reconcile the Actual Costs against the payments made by Nextel to Incumbent, Vendor(s) and Motorola (for Motorola Services and/or other Motorola costs identified on Schedule C) (the "Reconciliation"). The Reconciliation Statement will identify what the Parties agree upon as the amount of any additional payments (subject to Section 8) due to Incumbent, Vendor(s) and Motorola (for Motorola Services and/or other Motorola costs identified on Schedule C) or any refunds due to Nextel. The date of receipt by Nextel of Incumbent's signed Reconciliation Statement is the "Reconciliation Date". Any additional payments due to Incumbent from Nextel will be disbursed to Incumbent within thirty (30) days of the Reconciliation Date, provided the additional payments do not result from Actual Costs that exceed the Cost Estimate (in which case the provisions of Section 3(b)(iii) of this Agreement will apply). Any refunds due from the Incumbent to Nextel will be made within thirty (30) days of the Reconciliation Date.

(iii) In the event Incumbent's Actual Costs exceed the Cost Estimate, Incumbent must submit a Change Notice pursuant to Section 8 of this Agreement describing the change in scope of work that resulted in Incumbent's Actual Costs exceeding the Cost Estimate. Approval of any Change Notice will not be automatic but will be processed in accordance with Section 8 of this Agreement. Additional payments due to Incumbent, Vendor(s) or Motorola (for Motorola Services and/or other Motorola costs identified on Schedule C), which result from an excess of Actual Costs over the Cost Estimate, as agreed on the Reconciliation Date, will be disbursed to Incumbent, Vendor or Motorola (for Motorola Services and/or other Motorola costs identified on Schedule C) within thirty (30) days of execution by the Parties of the Amendment documenting the approved changes from such Change Notice.

(iv) Prior to the Closing Date, Nextel will pay on behalf of itself and Incumbent, both Parties' applicable sales and transfer taxes, if any, and all FCC fees in connection with the preparation and filing of the necessary FCC applications for the assignment(s) described in Section 2 of this Agreement.

4. **Reconfiguration Equipment:** If needed in order to facilitate the Incumbent's transition to the Replacement Frequencies, Nextel will loan any equipment identified in Schedule D as "Loaned Reconfiguration Equipment" and will provide any equipment identified in Schedule D as "Nextel Replacement Equipment". The Loaned Reconfiguration Equipment and Nextel Replacement Equipment may be referred to collectively as the "Nextel Schedule D Equipment". Nextel will deliver any Nextel Schedule D Equipment in accordance with the terms on Schedule D. Incumbent will fax to Nextel a bill of lading associated with each shipment of Nextel Schedule D Equipment signed by an authorized representative of Incumbent acknowledging receipt of the Nextel Schedule D Equipment in good working order.

5. **Retuning Cooperation:** For purposes of this Section, the "Current Program Completion Date" shall mean June 26, 2008 or such other date as may be established by the FCC for the completion of the Reconfiguration. The Parties acknowledge that the number of frequencies and locations covered by this Agreement will require the Parties to cooperate closely in performing their respective reconfiguration activities. The Parties agree that: (i) as of the Effective Date, the Incumbent may begin the reconfiguration of its subscriber units, in accordance with the appropriate sections of Schedule C and Schedule D, (ii) Incumbent may commence such other activities associated with the reconfiguration of its system as further detailed on Schedule C as of the Effective Date; and (iii) the Parties will agree on a schedule to make the FCC filings, clear the Replacement Frequencies and decommission the Incumbent Frequencies (the "Schedule"). Depending on the timing of the adoption of

this Schedule, it may require the submission of a Change Notice in accordance with Section 8 and/or an Amendment to this Agreement, but in any event the Parties agree to adopt the Schedule no later than: (a) sixty (60) days from the Effective Date of this Agreement, or (b) pursuant to a Schedule agreed upon at a TA scheduled "Implementation Planning Session" that includes the Incumbent's system, provided the Implementation Planning Session has been scheduled by the TA prior to the expiration of 60 days from the Effective Date of this Agreement, or (c) such other date as the FCC may require. Notwithstanding the aforementioned, in the event the completion date in the Schedule for the reconfiguration of Incumbent's system extends beyond the Current Program Completion Date, the completion date in the Schedule will be subject to FCC approval.

6. **Representations and Warranties:** Each Party represents and warrants to the other as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the state of its incorporation;

(b) this Agreement has been duly authorized and approved by all required organizational action of the Party;

(c) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will conflict with, or result in any material violation or default under, any term of its articles of incorporation, by-laws or other organizational documents or any agreement, mortgage, indenture, license, permit, lease, encumbrance or other instrument, judgment, decree, order, law or regulation by which it is bound;

(d) it is the lawful and exclusive FCC licensee of its respective license(s) described in this Agreement, such licenses are valid and in good standing with the FCC, and it has the authority to request the FCC to assign, modify or cancel such licenses;

(e) there is no pending or threatened action or claim that would have the possible effect of enjoining or preventing the consummation of this Agreement or awarding a third party damages on account of this Agreement; and

(f) to the best of its knowledge, all information provided to the other Party concerning the transactions contemplated by this Agreement is true and complete.

All representations and warranties made in this Agreement shall survive the Closing (defined below) for two (2) years.

7. **Covenants:** From the Effective Date until the Closing Date (defined below), each Party will promptly notify the other Party of any pending or threatened action by the FCC or any other governmental entity or third party to suspend, revoke, terminate or challenge any license described in this Agreement or to investigate the construction, operation or loading of any system authorized under such licenses. From the Effective Date until the Closing Date, Incumbent will not enter into any agreement resulting in, or otherwise cause, the encumbrance of any license for the Incumbent Frequencies, and Nextel will not enter into any agreement resulting in, or otherwise cause, the encumbrance of any of the Replacement Frequencies.

8. **Changes:** The Parties acknowledge that as the Reconfiguration of Incumbent's facilities proceeds in accordance with the work contemplated by the Cost Estimate, the need for changes to the scope of such work may arise. The Parties agree that their review of any such needed changes must be performed expeditiously to keep the work on schedule and that they will provide sufficient staff to manage changes. If either Party believes that a change to the work contemplated by the Cost Estimate is required (including changes by Vendors and/or Motorola), such Party will promptly notify the other Party

in writing. Such written notice (the "Change Notice") shall set forth (i) a description of the scope of the change to the work contemplated by the Cost Estimate believed to be necessary and (ii) an estimate of any increase or decrease in the Cost Estimate and in the time required to reconfigure Incumbent's existing facilities to operate on the Replacement Frequencies. A Party receiving a Change Notice shall immediately perform its own analysis of the need for and scope of the change and its impact on the 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 26 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 Cost Estimate and in the time required to reconfigure Incumbent's existing facilities to operate on the Replacement Frequencies. Incumbent is responsible for all unauthorized changes necessary as it relates to work performed by a Vendor and/or Motorola on behalf of Incumbent. No change to the Cost Estimate, the work contemplated by the Cost Estimate or the time required to reconfigure Incumbent's existing facilities to operate on the Replacement Frequencies 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 26.

9. **Closing:** The closing ("Closing") of the transactions contemplated by this Agreement will take place after (i) FCC approval of the assignment of the Incumbent Frequencies to Nextel and/or deletion of the Incumbent Frequencies from the Incumbent Licenses, (ii) FCC approval of the modification to add the Replacement Frequencies to the Incumbent Licenses or the creation of a new license for Incumbent that includes the Replacement Frequencies, (iii) the earlier of notification by Incumbent to Nextel that the Incumbent Licenses are clear of all users and thirty-five (35) days following the date Nextel notifies Incumbent that the Replacement Frequencies have been decommissioned, (iv) delivery by Incumbent of all receipts, invoices and other documentation required to substantiate the Actual Cost and signing by Incumbent and delivery to Nextel of the Reconciliation Statement and other documents required to complete the Reconciliation similar to those identified on Exhibit B, (v) FCC approval of the modification and/or cancellation of the FCC licenses Nextel holds for the operation of 800 MHz frequencies that are co-channels of the Replacement Frequencies, to the extent required to meet the technical short-spacing requirements of Section 90.621(b) of the FCC's Rules, 47 C.F.R. § 90.621(b), as such rule may be amended from time to time by the FCC, (vi) the refund to Nextel or payment to Incumbent as described in Section 3(b)(ii), (if applicable) and (vii) the satisfaction of all other conditions specified in this Agreement (the "Closing Date").

10. **Closing Conditions:** Performance of each Party's Closing obligations is subject to satisfaction of the following conditions (except to the extent expressly waived in writing by the other Party):

(a) the continued truth and accuracy of the other Party's representations and warranties set forth in this Agreement;

(b) all of the covenants of the other Party described in this Agreement are performed in all material respects; and

(c) execution and delivery by the other Party of Closing documents as well as any other Closing instruments and documents either Party or its counsel may reasonably request. Incumbent will execute and deliver to Nextel a closing certification required by the Transition Administrator ("Completion Certification").

(d) The Parties will cooperate in good faith and exercise their reasonable best efforts to finalize and execute these instruments and documents on or prior to the Closing Date in order to effect the Reconfiguration contemplated.

11. **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 supporting evidence related to the costs that Incumbent has expended in connection with the Reconfiguration contemplated by this Agreement 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 eighteen (18) months after the date of Incumbent's executed Completion Certification required by this Agreement 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.

12. **Excluded Assets; No Assumption of Liabilities:** Nothing in this Agreement should be construed as a transfer or assignment from either Party to the other Party of any assets (including FCC licenses) except as expressly set forth in this Agreement. Other than as expressly provided in this Agreement, neither Party is obligated to assign and transfer to the other any asset, tangible or intangible, nor is either Party entitled to assume any asset, tangible or intangible. Neither Party is assuming, nor is either Party responsible for, any liabilities or obligations of the other Party arising out of or in connection with the other Party's licenses (or related systems and facilities) that are the subject of this Agreement.

13. **Confidentiality:** The terms of this Agreement, any confidential information disclosed in connection with this Agreement (whether before or after the Effective Date, including during any negotiations or any mediation related to such negotiations or the 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 the Closing or termination of this Agreement for a period of two (2) years. The Parties may make disclosures as required by law, to the Transition Administrator and to a Vendor or Motorola (but only to the extent that such disclosure specifically relates to that Vendor's work and costs under this Agreement (as identified on Schedule C) or Motorola's work and costs under this Agreement (as identified on Schedule C and/or Schedule D) 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.

14. **Cooperation:** The Parties will cooperate with each other and the Transition Administrator with respect to the Reconfiguration work contemplated by this Agreement. Without limiting the foregoing obligations, the Parties agree to cooperate in the preparation of any applications required to be filed with the FCC, and Incumbent agrees to provide reasonable access to its facilities so that the Transition Administrator may comply with any audit obligations and so any Reconfiguration work contemplated by this Agreement may be performed in accordance with the Cost Estimate and performance schedule. If a Party is subject to a denial of FCC benefits for delinquent non-tax debts owed to the FCC that would prevent or delay the timely processing of any FCC applications, such Party shall cure such delinquency in an expeditious manner and at its sole expense.

15. **Indemnification:** From and after the Closing Date, each Party (the "Indemnifying Party") will indemnify and defend the other Party, its officers, directors, employees and agents (collectively, the "Indemnified Party"), from and against all third party demands, claims, actions, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and expenses (collectively, "Costs"), asserted against, imposed upon or incurred by the Indemnified Party arising from or related to: (i) any breach of any covenant, agreement, representation or warranty of the Indemnifying Party contained in, or made pursuant to, this Agreement; or (ii) any and all liabilities (including successor liabilities) or obligations relating to periods prior to the Closing Date resulting from the Indemnifying Party's operation of the system operated pursuant to the Incumbent Licenses or the Nextel Licenses, as applicable, or the ownership or use of those licenses or from the Indemnified Party's employment, or termination of employment, of its employees. The obligations under this Section survive the Closing for a period of three (3) years.

16. **Disputes:** The Parties agree that any dispute related to the Replacement Frequencies, Nextel's obligation to pay any cost of the Reconfiguration of Incumbent's system contemplated by this Agreement, or the comparability of Incumbent's reconfigured system to Incumbent's existing system prior to Reconfiguration, 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.

17. **No Gratuities:** No gift, gratuity, credit, thing of value or compensation of any kind shall be offered or provided by Incumbent, directly or indirectly, to any officer, employee or official of Nextel for the purpose of improperly obtaining or rewarding favorable treatment under this Agreement.

18. **Liens:** If any liens or security interests attach to any of Incumbent's facilities in favor of any vendor or service provider that is performing any Reconfiguration work contemplated by this Agreement as a result of Nextel's breach of any obligation to make direct payment (not in dispute) to such vendor or services provider, Nextel upon receipt of Notice from Incumbent will cooperate to remove any Liens.

19. **Vendor Performance Issues:** Incumbent will select and contract directly with Motorola and any vendor or service provider performing work required to reconfigure the Incumbent's existing facilities to operate on the Replacement Frequencies. Neither the Transition Administrator nor Nextel will be responsible for, or assume the risk of any failure of that Vendor or Motorola to perform its obligations under any contract entered into between Incumbent and such Vendor or Motorola in connection with the Reconfiguration contemplated by this Agreement.

20. **Motorola Replaced Equipment:**

(a) If the reconfiguration of the Incumbent's existing facilities to operate on the Replacement Frequencies involves the replacement of any of Incumbent's existing equipment with Motorola Schedule D Equipment (as identified on Schedule D), Incumbent will promptly return the equipment replaced by the Motorola Schedule D Equipment as identified on Schedule D (the "Motorola Replaced Equipment") to Motorola (shipping fees to be paid by Nextel).

(b) If Incumbent has ordered field implementation services for new subscriber radios ("Motorola Subscriber Services") and Incumbent fails to return any item of the Motorola Replaced Equipment to Motorola, Incumbent must either: (i) return to Motorola those items of the Motorola Schedule D Equipment that would have replaced the Motorola Replaced Equipment not returned, in new condition; or (ii) in accordance with Incumbent's mutual agreement with Motorola, Incumbent will make payment to Motorola for those items of the Motorola Schedule D Equipment that would have replaced those items of the Motorola Replaced Equipment not returned (including tax (if any) and shipping).

(c) If Incumbent did not order Motorola Subscriber Services and Incumbent fails to return any item of the Motorola Replaced Equipment to Motorola within 30 days of receipt of the Motorola Schedule D Equipment, Incumbent must promptly return to Motorola those items of the Motorola Schedule D Equipment that would have replaced the Motorola Replaced Equipment not returned, in new condition. If Incumbent fails to return any item of the Motorola Replaced Equipment to Motorola under this Section 20(c) and prior to receipt of a Reconciliation Statement from Nextel Incumbent does not demonstrate to Nextel that Incumbent has made payment of the Product Typical Value (as identified on Schedule E(1)) directly to Motorola for those items of Motorola Schedule D Equipment that would have replaced the Motorola Replaced Equipment not returned, then either: (i) Nextel will deduct the Product Typical Value for those items of Motorola Schedule D Equipment provided to replace the Motorola Replaced Equipment not returned to Motorola (including tax (if any) and shipping) (the "Motorola Equipment Refund") from the final payment due to Incumbent after the Reconciliation; (ii) Incumbent must pay the Motorola Equipment Refund to Nextel prior to the Closing Date (if no final payment is due to Incumbent); or (iii) Nextel will deduct the portion of the Motorola Equipment Refund up to the value of the final payment due to Incumbent and Incumbent must pay Nextel the remaining Motorola Equipment Refund not covered by the final payment prior to the Closing Date (if the final payment due Incumbent is less than the Motorola Equipment Refund).

21. Nextel Replaced Equipment:

(a) If the reconfiguration of the Incumbent's existing facilities to operate on the Replacement Frequencies involves the replacement of any of Incumbent's existing equipment with equipment provided by Nextel (as identified on Schedule D) or equipment the cost of which is being paid by Nextel pursuant to this Agreement as listed in Schedule C (collectively the "Replacement Equipment"), then (i) title to the equipment replaced by the Replacement Equipment (the "Nextel Replaced Equipment") as listed in Schedule D shall pass to Nextel at Closing free and clear of liens and any other encumbrances, and (ii) Incumbent shall execute such documentation as Nextel may reasonably request to transfer title to Nextel and shall within thirty (30) days deliver the Nextel Replaced Equipment to Nextel at Nextel's costs and pursuant to Nextel's instructions. Title to Replacement Equipment provided by Nextel will pass to Incumbent at Closing and Nextel shall execute such documentation as Incumbent may reasonably request to transfer title to Incumbent free and clear of liens.

(b) If Incumbent fails to return any item of the Nextel Replaced Equipment to Nextel, Incumbent must return to Nextel those items of the Replacement Equipment that would have replaced the Nextel Replaced Equipment not returned, in new condition within thirty (30) days of receipt of the Replacement Equipment. If Incumbent fails to return any item of the Nextel Replaced Equipment to Nextel under this Section 21(b) and a Product Typical Value is set forth in Schedule E (2) for the item of Replacement Equipment then either: (i) Nextel will deduct the Product Typical Value (as set forth in Schedule E (2)) for those items of Replacement Equipment provided to replace the Nextel Replaced Equipment not returned to Nextel (including tax (if any) and shipping) (the "Nextel Equipment Refund") from the final payment due to Incumbent after the Reconciliation less any Motorola Equipment Refund; (ii) Incumbent must pay Nextel the Nextel Equipment Refund prior to the Closing Date (if no final payment is due to Incumbent and in addition to any Motorola Equipment Refund payment); or (iii) Nextel will deduct the portion of the Nextel Equipment Refund up to the value of the final payment due to Incumbent less any Motorola Equipment Refund, and Incumbent must pay Nextel the remaining Nextel Equipment Refund and any Motorola Equipment Refund not covered by the final payment prior to the Closing Date (If the final payment due Incumbent is less than the Nextel Equipment Refund and any Motorola Equipment Refund).

22. 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 Orange County SED-FRA Final Exe.

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, the Parties shall take all necessary action (including preparing and filing FCC documents) to return the *status quo ante* on the date of this Agreement. In the event of termination, Nextel shall pay all costs associated with the return to the *status quo ante* except if such termination was due to an uncured material breach by Incumbent.

23. **Attorney's Fees:** In any legal proceeding by a Party to enforce its rights under this Agreement against the other Party, attorney's fee shall be resolved in accordance with the dispute resolution provisions of the Order, as it may be amended from time to time. In the event a Party seeks to enforce its rights in a legal proceeding not contemplated under the Order, each Party shall bear its own attorney's fees and costs.

24. **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>County of Orange Sheriff's Communications Division Attn: Ray Grimes 840 N. Eckhoff St. Suite 104 Orange, CA 92868 Phone: (714) 704-7911 Fax:</p>	<p>If to Nextel, to:</p> <p>Nextel of California, 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 Jenkins, VP Spectrum Resources Phone: (404) 597-1224 Fax: (678) 405-8252</p>

25. **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.

26. **Amendments:** This Agreement, including without limitation the scope of work contemplated hereby and the Estimated Cost 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.

27. **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 this Agreement.

28. **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 California 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.

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.

INCUMBENT:
County of Orange

NEXTEL:
Nextel of California, Inc.

By: _____
Name: Raymond L. Grimes
Title: Engineering Manager, OCSD Comm.

By: _____
Name:
Title:

APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA
By: 
Deputy
Date: 12-13-07

Reconciliation Documentation

Certification of Labor

Incumbent hereby certifies that the information provided is true and accurate to the best of Incumbent's knowledge. Incumbent further certifies that the total number of equipment units ("Units") and/or the total amount of labor hours ("Hours") listed above have been determined in accordance with the TA's policy on Incumbent Labor as documented at <http://www.800ta.org/content/PDF/policy/IncumbentLaborPolicy.pdf>. The Incumbent acknowledges that all costs incurred and/or charged by the Incumbent attributable to the Units and/or Hours listed are subject to audit and that the Incumbent is prepared to provide to the TA upon request documentation to support all costs incurred and/or charged. The Incumbent also certifies the number of Units and/or Hours listed above are the minimum amount necessary under the Order to complete the Reconfiguration. The Incumbent further acknowledges that the Incumbent is prepared to provide to the TA with invoices issued by the Incumbent to non-related third-party customers, documentation to support the actual number of Units and/or amount of Hours charged by the Incumbent.

Incumbent Name: _____

Related Invoice #'s: _____

Signature: _____

Name: _____

Title: _____

Date: _____