

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

310



FROM: Riverside County Information Technology (RCIT)

SUBMITTAL DATE:
April 28, 2009

SUBJECT: PSEC Project Contract Legal Support for Rebanding Contract Negotiations

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the contract with outside counsel Katz Law Office for the Rebanding contract negotiations with Sprint Nextel, and;
2. Authorize the Chairman to execute the contract on behalf of the County.

On July 8, 2004, the FCC approved a Report and Order to resolve the ongoing and growing problem of interference between public safety radio systems operating in the 800 MHz band and Sprint Nextel customers. The plan requires reorganization of the existing 800 MHz frequency allocations (public safety and other users) in order to reduce or eliminate interference in the band. In accordance with the FCC's Report and Order, Sprint Nextel is responsible for funding the Rebanding Project.


Matthew W. Frymire
Chief Information Officer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 100,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$	Budget Adjustment:	No
	Annual Net County Cost:	\$	For Fiscal Year:	08/09

SOURCE OF FUNDS: PSEC operating budget.	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature BY: 
Elizabeth J. Olson

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE: 4/28/09

Departmental Concurrence

Policy
 Policy
 Consent
 Consent
 Dep't Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.: _____ **District:** _____ **Agenda Number:** _____

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.28

BACKGROUND: (Continued)

Beginning in early 2000, several public safety agencies using 800 MHz trunked radio systems discovered that mobile communications were sometimes disrupted--a mobile or portable radio could not receive or transmit in certain geographic areas.

After some investigation, it was discovered that the interference was related to the nearby commercial radio transmitter sites operated by commercial radio companies, in most cases the wireless carrier Nextel. An agreement was reached between the FCC and Nextel and a plan was created to reband the 800 MHz channels and eliminate the growing interference problems. It was agreed to continue this plan after Sprint and Nextel merged in 2005.

In lieu of rebanding the County's 800 MHz frequencies, and in consideration of the current PSEC implementation, the FCC and Sprint Nextel requested that the County instead migrate totally from the 800 MHz frequencies to the 700 MHz frequency. The 700MHz band is being established for expansion of public safety frequencies. By doing so, the County would then relinquish the assigned 800 MHz frequencies to assist in other rebanding efforts throughout Southern California. Sprint Nextel has agreed to fund the County's migration as part of the rebanding effort.

This agreement will ultimately be a zero cost contract to the County. Payment by the County will be made directly to Katz Law Office, after which Sprint Nextel will reimburse the County for these legal expenses.

The PSEC Project is now in the contract negotiation phase with Sprint Nextel and requires legal support. The support is necessary to assist in the negotiation of a comprehensive final contract with Sprint Nextel. The contract will define the reimbursement for the County's expenses to complete this migration to 700 MHz. In addition, the contract will define the equipment affected by this effort and resources required to successfully perform the migration.

Arthur Katz, attorney with Katz Law Office was selected by County Counsel and RCIT, and has been involved with the PSEC Project since 2006. Mr. Katz is aware of the County's time requirements and has a thorough understanding of Rebanding. Finding and hiring another attorney with the level of experience and knowledge of the County's requirements would cause a detriment to the established timeframe and negotiation process.

AGREEMENT WITH KATZ LAW OFFICE, P.C.
FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made by and between THE COUNTY OF RIVERSIDE (hereinafter referred to as the "COUNTY") and KATZ LAW OFFICE, P.C. (hereinafter referred to as "LAW FIRM") and dated as of the first day of the term of this AGREEMENT under Section 1 hereof.

RECITALS

WHEREAS, the Board of Supervisors (hereinafter referred to as the "Board") of the COUNTY desires to contract for professional legal services with regard to certain re-engineering and reconfiguration of radio frequencies on which the COUNTY'S emergency communications systems operate; and

WHEREAS, LAW FIRM has been providing professional legal services to the COUNTY on related matters and been found qualified to perform the services described herein based upon competence and experience in relevant areas; and

WHEREAS, the COUNTY desires to retain LAW FIRM'S services of the scope described below on the terms provided herein:

NOW THEREFORE, the COUNTY and LAW FIRM agree as follows:

1. Term. The term of this AGREEMENT shall begin on the date that the COUNTY executes this Agreement following execution by LAW FIRM, and shall continue until completion of the Project (as defined in Exhibit A hereto), unless sooner terminated pursuant to Section 2 or Section 5.

2. Termination. Services performed under this AGREEMENT may be terminated in whole or in part at any time the COUNTY deems to be in its best interest, as determined by the COUNTY. The COUNTY shall terminate services by delivering to LAW FIRM a written Termination Notice executed by the COUNTY and specifying the extent to which services are terminated and the effective termination date. LAW FIRM also will have the right to terminate this engagement at any time, subject to giving the COUNTY a reasonable opportunity to arrange for alternative representation. LAW FIRM may also, subject to applicable professional ethical obligations, terminate its services and resign its representation of the COUNTY under this AGREEMENT in the event that any of LAW FIRM'S statements for fees and expenses remain unpaid (in whole or in part) after the due date for such statement and ten (10) business days after LAW FIRM has notified the COUNTY that it intends to resign if such statement is not fully paid, and the COUNTY expressly agrees and consents to such right to terminate and resign as set forth in this paragraph. LAW FIRM'S engagement to represent the COUNTY with

respect to the Project will be deemed to have terminated (i) when LAW FIRM has completed the services contemplated by this AGREEMENT or (ii) at any time that a period of one year elapses during which the COUNTY does not request and LAW FIRM does not furnish any billable services (other than final services to be delivered in compliance with Section 3) to COUNTY under this AGREEMENT, provided that such termination shall become effective only upon LAW FIRM'S notice to the COUNTY and acknowledgement of its agreement to provide the final services described under Section 3 below prior to such termination. .

3. Effect of Termination. After receiving a Termination Notice and unless otherwise directed by COUNTY, or in the event that LAW FIRM terminates and resigns as permitted under Section 2, LAW FIRM shall, subject to applicable professional ethical obligations: (1) take all reasonable steps necessary to stop services on the date and to the extent specified in the Termination Notice; (2) complete services not terminated by the Termination Notice; (3) submit final billing for terminated services within thirty (30) days from the end of the calendar month of the effective termination date of the terminated services; and (4) notwithstanding the mandate of clause (1) of this Section 3 and in accordance with Section 4, promptly submit a brief closing report advising COUNTY of the status of the matters being handled and any memorandum requested.

4. Closing Report upon Termination. LAW FIRM shall deliver a Closing Report to the COUNTY immediately after termination of services under Section 2 or Section 5 which shall include, but not be limited to:

(a) A brief description of the status of all matters or projects that had been assigned to ATTORNEY hereunder.

(b) A memorandum addressing such questions as the COUNTY may specify regarding the COUNTY'S current position and legal position with respect to the Project and within the scope of LAW FIRM'S engagement.

On request with respect to the terminating services for the Project, LAW FIRM shall give COUNTY copies or originals, as appropriate, of all matter files and attorney work product for the Project. This includes any computerized index, computer programs and document retrieval system created or used for these matters.

5. Professional Conflict of Interest. LAW FIRM represents and warrants that no the COUNTY employee whose position as such enables him/her to influence the award of this AGREEMENT or any competing agreement, and no spouse or economic dependent of such employee is or shall be employed in any capacity by LAW FIRM, or shall have any direct or indirect financial interest in this AGREEMENT.

Anyone who is a former employee of the COUNTY at the time of execution of this AGREEMENT or who subsequently becomes affiliated with LAW FIRM in any capacity (employee, associate or partner) shall not (i) participate in the services provided by LAW FIRM to the COUNTY; or (ii) become a partner, shareholder or otherwise share in the profits of LAW FIRM for a period of one year from the date the former COUNTY employee left COUNTY employment.

It is possible that some of the LAW FIRM'S present or future clients will have disputes with the COUNTY during the time that LAW FIRM is representing the COUNTY. The COUNTY and LAW FIRM agree that should the situation arise where a new or existing client engages LAW FIRM in any matter in a position adverse to the COUNTY or in which the COUNTY'S interest may be adversely affected, that LAW FIRM will so advise COUNTY and upon receipt of such notice the COUNTY may determine that the conflict may be waived or may determine that it is in the COUNTY'S best interest to terminate the services of LAW FIRM. Should the COUNTY determine that it is best to terminate the services of LAW FIRM, the COUNTY will notify LAW FIRM of such decision, and Section 3 of this Agreement shall apply. .

6. LAW FIRM'S Services and Responsibilities. Upon appointment, LAW FIRM shall provide the COUNTY with the names of any other professionals (partners, associates, law clerks, paralegal, etc.) in addition to the undersigned who on the date hereof are expected to assist in the provision of services under this AGREEMENT, and the functions to be performed by each such professional shall also be provided. LAW FIRM'S Supervising Attorney shall be the undersigned representative of FIRM, who will be fully responsible for the quality of the work product. The COUNTY also requests no more than two (2) attorneys in the firm handle its files. Within a law firm, research and minor work should be performed by the lowest level of personnel (e.g. junior attorneys, paralegal) capable of performing a given task. Responsibility for the quality of work product remains with LAW FIRM'S Supervising Attorney. Subject to applicable professional obligations and LAW FIRM'S right to withdraw from representation of the COUNTY on the Project if COUNTY disapproval might subject LAW FIRM to legal claims or liability, LAW FIRM agrees that the COUNTY retains the right to approve or disapprove any and all attorney assignments to the Project, and the COUNTY agrees to make such approval/disapproval determination promptly on request if such determination is material to LAW FIRM'S planning to staff the Project or otherwise comply with this AGREEMENT.

Key LAW FIRM Personnel:

(1) LAW FIRM'S supervising attorney for this engagement on the Project (the "Supervising Attorney") shall be Arthur S. Katz. Subject to applicable professional ethical rules, any change in LAW FIRM'S Supervising Attorney shall be first authorized in writing by the COUNTY. LAW FIRM'S Supervising Attorney shall have full authority to act for LAW FIRM on all daily operational matters under this AGREEMENT.

(2) Support attorneys and paralegals shall be designated by LAW FIRM'S Supervising Attorney and shall be comprised as agreed upon on an as needed basis. Any change

in staffing shall be made only upon telephonic or written notice, and written consent by the COUNTY in accordance with this Section 6, which may be made by facsimile transmission, which consent shall not be unreasonably withheld.

7. Legal Representation. This AGREEMENT defines and is limited to LAW FIRM'S engagement to represent the COUNTY with respect to the Project. The scope of LAW FIRM'S representation of the COUNTY with respect to the Project is further set forth in Exhibit A to this AGREEMENT.

LAW FIRM shall meet with COUNTY as COUNTY requires and provide all information and reports, including an estimate of fees for each aspect of representation, deemed necessary by the COUNTY to keep it informed.

8. Prior Approvals. LAW FIRM shall obtain the prior written approval of the COUNTY before: (i) retaining any consultant; (ii) undertaking research of more than four (4) hours on any particular issue; (iii) commencing air or other long-distance travel on behalf of the COUNTY.

In addition, LAW FIRM shall: (i) assist the COUNTY in evaluation and negotiations, and shall obtain authority from the COUNTY before making any settlement proposal on behalf of the COUNTY; (ii) immediately notify the COUNTY verbally and in writing when a proposal of settlement is received; and (iii) keep and preserve all backup documentation to support all entries included in its billing statements with respect to the Project for a period of four (4) years after termination or completion of LAW FIRM'S work on the Project. The COUNTY acknowledges and agrees that LAW FIRM may, in exercising judgment while working on a matter, discard or overwrite certain documents and files, such as interim drafts, the retention of which they do not believe to be significant to the protection of the client's interest, and that COUNTY has no rights to files that contain information that is confidential or privileged to other clients of LAW FIRM.

9. Settlement Evaluation. If applicable, LAW FIRM shall provide the COUNTY with an initial evaluation on settlement potential involving the COUNTY or any subordinate program that will serve as the basis for developing the legal position and strategy of the COUNTY and for controlling costs. LAW FIRM shall provide status reports upon request of the COUNTY.

10. Initial Cost Estimate. LAW FIRM and the COUNTY have determined an initial cost estimate of one hundred thousand dollars (\$100,000.00) (the "Initial Cost Estimate"); LAW FIRM shall notify the COUNTY immediately in writing when LAW FIRM has expended fifty percent (50%) and seventy-five percent (75%) of the Initial Cost Estimate. LAW FIRM shall not exceed the Initial Cost Estimate without prior written authorization of the COUNTY. A written amendment shall be a condition precedent to any obligation for payment by the COUNTY beyond the approved Initial Cost Estimate.

11. Supervision of Agreement. Matthew Frymire, COUNTY Chief Information Officer, shall administer this Agreement on behalf of the COUNTY. Mr. Frymire, or his designee, shall have full authority to act for the COUNTY on all daily operational matters under this Agreement and shall review and approve all LAW FIRM' reports, whether written or verbal, and any change in LAW FIRM' Supervising Attorney. Approval of proposed settlement recommendations is subject to approval by the Board of Supervisors, as legislative body of the COUNTY.

12. Fees. The billing rate for all attorneys that provide services under this AGREEMENT shall be:

\$683 per hour for Arthur Katz for the year ending August 31, 2009,

with a 4% increase (rounded to the nearest dollar) for subsequent years commencing each September 1, provided that LAW FIRM shall also provide invoices covering periods prior to the effective date of this AGREEMENT for services that may be reimbursable by Sprint Nextel Corporation ("Nextel") as related to the Project, and billing rates in those invoices for periods prior to September 1, 2008 shall be as have already been authorized by the COUNTY under the terms of the engagement under which they arose. Any rate increase not provided for in this AGREEMENT shall require an amendment to this AGREEMENT. The COUNTY acknowledges that it has been advised that in the event of any fee dispute, the COUNTY has the right (but not the obligation) to request arbitration in New York City under Part 137 of the Rules of the Chief Administrator of the Office of Court Administration of the New York State Unified Court System, or under applicable New York bar association procedures, and LAW FIRM agrees to participate fully in that process.

13. Expenses. The COUNTY shall reimburse LAW FIRM for their actual out-of-pocket expenses but without any additional costs for having advanced the funds or for expenses generally considered as overhead already reflected in the LAW FIRM'S hourly rate.

Reimbursable ordinary expenses shall include, but not be limited to: (i) postage and express/overnight courier service; (ii) messenger service; (iii) document reproduction by outside vendor; and (iv) in-house document reproduction, provided, however, that if amount charged in any one month exceeds \$500.00, prior approval of the COUNTY shall be obtained.

Reimbursable extraordinary expenses shall include charges for which LAW FIRM has obtained prior approval of the COUNTY. Such expenses shall include, but not be limited to: (i) consultants; (ii) air or other long-distance travel, including related expenses; (iii) investigative services and (iv) any expense item exceeding Five Hundred Dollars (\$500.00).

Non-reimbursable expenses shall include, but not be limited to: (i) administrative staff time or overtime for performing secretarial, clerical, or word processing functions; (ii) charges for time spent to provide necessary administrative information for the COUNTY audits or internal COUNTY billing inquiries; and (iii) charges for work performed which had not been authorized by the COUNTY, in

which event the COUNTY may refuse such work and the related charges, provided that work performed consistent with prior instructions, practices and course of conduct requested or accepted by the COUNTY shall be deemed to have been authorized unless and until the COUNTY instructs that work is to be performed differently.

14. Billings and Payments. LAW FIRM shall submit its billing statement monthly, but if no more than \$2,000 of services have been delivered in the month, then LAW FIRM may submit its billing statement no less frequently than quarterly, in arrears, no later than the last day of the month following the month(s) for which services were rendered and described in the statement. The COUNTY accepts that because there are sometimes delays in the accrual of costs and disbursements, LAW FIRM may include accrued costs and disbursements related to services provided in a particular month in a subsequent billing statement. The original billing statement(s) and one copy shall be submitted to:

Matthew Frymire, Chief Information Officer
Riverside County Information Technology
4080 Lemon Street, 10th Floor
Riverside, CA 92501

or a .pdf file of such billing statement and any associated cover letter shall be sent to Mr. Frymire at his email address, MFrymire@riversidecountyit.org. Mr. Frymire may also designate in writing another person to receive these documents.

The original of each billing statement or accompanying cover letter shall be deemed to have been reviewed and determined to be accurate by LAW FIRM'S Supervising Attorney and shall be identified by a unique number and shall be itemized to include: (i) staffing level(s), hourly rates and specific activities for each attorney and/or paralegal; (ii) listing of each activity as a line item in a time reporting format acceptable to the COUNTY with a detailed description of specific activities for each attorney and/or paralegal; (iii) total current period fees and total cumulative fees billed on the Project; and (iv) current period expenses and total cumulative expenses for the Project billed in itemized categories, including all invoices for disbursements paid to others. The COUNTY agrees that LAW FIRM'S historical form of invoice is generally acceptable, provided that to the extent that the COUNTY requires a declaration or cumulative fees and further expense information, such information shall be supplied in an accompanying cover letter to the related invoice(s).

It is the expectation of the COUNTY that it will not be billed for ordinary overhead expenses, including (i) ordinary word processing services; (ii) time to prepare and review billings for COUNTY audits or internal COUNTY billing inquiries; and (iii) travel within the locality in which LAW FIRM is based (other than ground transportation that is part of pre-authorized long-distance travel). Reimbursable charges would include (i) telephone calls; (ii) express mail or courier service when deemed necessary; (iii) fax charges; (iv) photocopy charges (within industry standards); and (v) travel expenses at prudent levels for travel to the southern California area, with prior authorization of the COUNTY. LAW FIRM shall generally follow then current travel policies notified to LAW FIRM that are applicable to the

COUNTY employees engaged in interstate travel. Generally, LAW FIRM shall not bill for travel time; however, the COUNTY agrees to cooperate in the planning and scheduling of meetings so that LAW FIRM'S attorneys may take advantage of overnight flights and similar means of avoiding business hours spent on uncompensated travel.

LAW FIRM shall have and maintain individual daily time entry backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and consistent with prevalent practices for comparable law firms. LAW FIRM shall make such documentation (which may be provided in electronic form) available to auditors upon request and at such reasonable times and locations as may be agreed to between the COUNTY and LAW FIRM.

The COUNTY shall make payment(s) for services rendered under this Agreement monthly in arrears based on the itemized billing statement(s) LAW FIRM submit to the COUNTY. The COUNTY shall review all billing statements in accordance with COUNTY policy and standards, and for purposes of Nextel payment in accordance with Exhibit A. The COUNTY shall make its best effort to process payments promptly after receiving LAW FIRM' monthly billing statement (including prompt delivery to Nextel of such reviewed invoices and any required acknowledgement forms in the case of fees and expenses reimbursable by Nextel). If full payment is not received within 60 days of the COUNTY'S receipt of the statement, LAW FIRM reserves the right to assess a late charge at a per annum rate equal to 0.5% per month or part thereof (based upon the day of the month of the invoice). The purpose of the late charge is to assess on an equitable basis the added expenses incurred by LAW FIRM for overdue accounts.

15. Confidentiality. LAW FIRM shall maintain the confidentiality of all information which it may acquire arising out of or connected with activities under this AGREEMENT in accordance with all applicable federal, State and COUNTY laws, regulations, ordinances and directives relating to confidentiality, including applicable professional ethical obligations under the Code of Professional Responsibility. LAW FIRM shall inform all of its principals, employees and agents providing services hereunder of the confidentiality provisions of this AGREEMENT. These confidentiality obligations shall survive the termination or expiration of this AGREEMENT.

16. Communications with the COUNTY. LAW FIRM recognizes that its relationship with the COUNTY and its agents, employees, officers and/or representatives is subject to the attorney-client privilege as defined under applicable law and professional ethical obligations, and that subject to such law and obligations, any information acquired during the term of this AGREEMENT from or through the COUNTY is confidential and privileged. LAW FIRM warrants that it shall not disclose or use in any manner whatsoever any of the information received from the COUNTY and its officers, employees and agents in connection with said relationships or proceedings LAW FIRM understands that the County Counsel is the empowered legal representative of the COUNTY and its officers and employees. LAW FIRM shall not without specific direction from the County Counsel communicate with or advise the COUNTY Board of Supervisors.

17. Insurance. LAW FIRM shall procure and maintain or cause to be maintained, at its sole cost and expense, errors and omissions (professional liability) insurance applicable to the services to be rendered under this AGREEMENT, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If LAW FIRM'S professional liability insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement. Upon termination of this AGREEMENT or the expiration or cancellation of the claims made insurance policy, LAW FIRM shall purchase at its sole expense either (1) an Extended Reporting Endorsement (also known as Tail Coverage); or (2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this AGREEMENT; or (3) demonstrate through Certificates of Insurance that LAW FIRM has maintained continuous coverage with the same or original insurer. Coverage provided under items; (1), (2) or (3) will continue for a period of five (5) years beyond the termination of this Agreement.. Additionally, LAW FIRM shall not dispatch to COUNTY premises to perform services under this Agreement any person who, if using vehicles or mobile equipment on COUNTY premises, does not maintain for himself/herself liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence (including applicable umbrella liability coverage. LAW FIRM currently carries professional liability insurance applicable to the services to be rendered under this AGREEMENT with a limit of liability of \$2,000,000 per occurrence and \$2,000,000 annual aggregate.

LAW FIRM shall either (i) maintain customary Commercial General Liability insurance coverage covering claims which may arise from or out of LAW FIRM'S performance of its obligations hereunder or (ii) if such a policy is not maintained, shall otherwise fulfill its obligations under this AGREEMENT but only send to COUNTY premises LAW FIRM personnel that are covered by customary personal liability (including umbrella coverage) insurance meeting the dollar coverage limits of this paragraph. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

LAW FIRM shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability constituting Damages arising out of third party claims based upon LAW FIRM'S services, to the extent that such Damages are proximately caused by the negligent act or omission or the willful or intentional misconduct of LAW FIRM in the course of providing services. "Damages" shall mean the Damages defined in and payable under the errors and omissions (professional liability) insurance policy referred to in the first paragraph of this Section 17 and in effect with respect to such liability. With respect to all claims of COUNTY for indemnification under this AGREEMENT, LAW FIRM shall be given full authority to assume control of the defense thereof through its own counsel (which may be counsel of its insurance company) at its expense and to compromise or settle any suits or claims, so far as this may be done without prejudice to the right of the County to the indemnification provided under this Section 17, and the County shall cooperate fully with LAW FIRM in the defense of such suit or claims and provide LAW FIRM such assistance as LAW FIRM may reasonably require in connection therewith, provided

that LAW FIRM shall pay the actual expenses of the County in providing such assistance to the extent that such expenses are within the scope of this indemnity. The County may in its discretion at (except as otherwise provided in the following paragraph) its own expense participate directly with its own law department staff or through its own counsel to consult with VENDOR in the defense of such suits or claims.

The COUNTY and other indemnified persons shall promptly provide LAW FIRM with written notice of any claim that the COUNTY believes falls within the scope of the indemnities provided under this AGREEMENT, provided that failure promptly to supply such notice shall not relieve LAW FIRM of its indemnification obligation except to the extent that such delay in notice materially prejudices the successful defense of the claim or the mitigation of damages associated with the claim. This provision shall survive termination or expiration of this AGREEMENT. The indemnified persons may, at their own respective expense, assist in such defense if they so chooses, provided that LAW FIRM (or LAW FIRM'S insurance company) shall (unless LAW FIRM (or such insurance company) fails promptly to exercise such control) control such defense and all negotiations relative to the settlement of any such claim. LAW FIRM shall also be responsible for the employment of its (and any insurance company's) counsel and for all expenses of defending such claims, and any employment by indemnified persons of separate counsel shall be at their own respective expense unless (i) the employment of such counsel has been specifically authorized in writing by LAW FIRM, or (ii) LAW FIRM (or its insurance company) has failed to assume the defense of any such claim and employ counsel for the indemnified person.

18. Understandings and Consent. The COUNTY understands and acknowledges that LAW FIRM cannot make and has not made any guarantees regarding the outcome of any matter.

19. Notices. All notices and required reports shall be written and hand-delivered or mailed by first class, postage prepaid, addressed to the COUNTY or LAW FIRM at the addresses below, or at any other address the COUNTY or LAW FIRM shall provide in writing to each other:

If to the COUNTY:

Matthew Frymire, Chief Information Officer
Riverside County Information Technology
4080 Lemon Street, 10th Floor
Riverside, CA 92501

Mr. Frymire may also designate in writing another person to receive these documents.

If to LAW FIRM:

Katz Law Office, P.C.
1230 Avenue of the Americas, 7th Floor
New York, NY 10020-1517

Attn: Arthur S. Katz

20. Assignment. No part of this AGREEMENT or any right or obligation arising from it is assignable without the written consent of the COUNTY. Any attempt by LAW FIRM to assign or subcontract services relating to this AGREEMENT without the consent of the COUNTY shall constitute a material breach of this AGREEMENT. However, LAW FIRM may retain consultants and experts as LAW FIRM deems appropriate after receiving the written approval of the COUNTY.

21. Merger. The following exhibit is attached and incorporated as part of this AGREEMENT. The exhibit is titled as follows:

Exhibit A – Special Terms Related to Federally Mandated Frequency Reconfiguration

22. Complete Agreement. This AGREEMENT shall constitute the complete and exclusive statement of understanding between the COUNTY and LAW FIRM with respect to the Project and supersedes all previous written or oral agreements with respect to the Project, and all prior communications between the COUNTY and LAW FIRM relating to the engagement of LAW FIRM with respect to the Project. It does not apply to any other engagement(s) of LAW FIRM by the COUNTY. The undersigned hereby respectively acknowledge and agree that, acting for the COUNTY or LAW FIRM (as the case may be), he/she has reviewed and understands the terms of this AGREEMENT and, in the case of the COUNTY, further agrees and accepts the agreements and disclosures in this AGREEMENT (including Exhibit A hereto), including the disclosures regarding conflicts of interest, and the waiver of conflicts or potential conflicts of interest in past, present and future matters set forth in the AGREEMENT.

Date: _____

THE COUNTY OF RIVERSIDE

By: _____

Name:

Title:

Date: 4-1-09

KATZ LAW OFFICE, P.C.

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis DATE 4/1/09
NEAL R. KIPNIS DATE

By: Arthur S. Katz

Name: Arthur S. Katz

Title: Principal

Exhibit A
to AGREEMENT WITH KATZ LAW OFFICE, P.C.
FOR PROFESSIONAL SERVICES

Special Terms Related to Federally Mandated Frequency Reconfiguration

The purpose of this Exhibit A is to confirm the additional terms and conditions under which LAW FIRM will undertake to represent the COUNTY in connection with procurement by the COUNTY of public safety bandwidth and of related band reconfiguration services and equipment (the "Project") all pursuant and subject to the Federal Communications Commission ("FCC") Order (together with the related Memoranda, Opinions and Supplemental Orders issued from time to time, as well as any special related waivers that may be granted to the COUNTY, the "Order") governing the nationwide rebanding program under the Order that is administered by the FCC-appointed 800 MHz Transition Administrator LLC (the "TA"). Capitalized terms not defined in this Exhibit A are defined in the AGREEMENT of which this Exhibit A is a part.

LAW FIRM will not be responsible for matters being handled by other counsel or that the COUNTY is handling itself. If LAW FIRM'S representation of the COUNTY under the AGREEMENT is to be expanded beyond the scope of the AGREEMENT, that will be confirmed in advance by amendment of the AGREEMENT. LAW FIRM maintains no offices in California and currently offers to clients no lawyers licensed to practice in that jurisdiction. The COUNTY and LAW FIRM anticipate that minimal and possibly no work will require LAW FIRM to make professional staff physically present in California subsequent to the effective date of the AGREEMENT. LAW FIRM will not advise on matters of law other than the laws of the State of New York and certain federal communications law. As to California and other state and federal law, the COUNTY will rely on the Office of County Counsel or other outside counsel.

The scope of LAW FIRM'S services will generally be those legal services that are intended to address the COUNTY'S compliance contemplated under the Order, including with respect to any COUNTY action required or permitted by the Order in lieu of the typical 800 MHz "rebanding" contemplated under the Order. The COUNTY and LAW FIRM each contemplate that the cost of up to all fees and expenses for LAW FIRM under the AGREEMENT will ultimately be paid by Nextel in accordance with the Order. However, the scope of LAW FIRM'S work will be determined by the COUNTY in accordance with the AGREEMENT and not by Nextel, to which LAW FIRM shall accord no privileges of a client. The COUNTY may instruct LAW FIRM to act within the scope of the engagement whether or not it is assured that Nextel will ultimately pay the related fees and expenses. Subject to the foregoing, it is the COUNTY'S general intention to seek from LAW FIRM under this engagement services that are expected to be paid for by Nextel.

The scope of Project legal services to be performed by LAW FIRM may include:

- assisting the COUNTY in providing advice and representation in dealing with third parties (including but not limited to the FCC and the TA) in connection with the Project;
- advising the COUNTY regarding the FCC rules and procedures arising under the Order and governing the Project;

- assisting the COUNTY in the resolution of disagreements with Nextel, the TA, Motorola and other third parties related to proposed new frequencies, the obtaining of comparable facilities for relocated radio systems, or the completion of the Project;
- assisting the COUNTY in the presentation of planning and cost estimates for submission to the TA and Sprint Nextel;
- assisting the COUNTY in the negotiation, review and drafting of Project contracts, including the Planning Funding Agreement (“PFA”) and Frequency Reconfiguration Agreement (“FRA”) with Nextel and related documentation impacting the COUNTY;
- assisting the COUNTY in any required or elective mediation using the Transition Administrator over disputes with Sprint Nextel;
- reviewing and commenting on and negotiating related vendor proposals for services and equipment covered by the FRA; and
- assisting the COUNTY in communication with third parties on related matters and legal issues, including any Reconfiguration Planning Phase Agreement and Reconfiguration Implementation Phase Agreement between the COUNTY and Motorola, Inc. or other contractual arrangements in lieu thereof, provided that the COUNTY may elect to have any LAW FIRM services related to contractual arrangements that modify the PSEC Radio Project contract handled under a separate engagement if the COUNTY does not intend to seek Nextel payment of the related costs.

The TA has explained cost-bearing by Nextel as follows, and LAW FIRM and the COUNTY will cooperate in complying with the related procedures:

Nextel is generally responsible for the cost of relocating all affected 800 MHz incumbents to new spectrum with comparable technological and operational capabilities to those presently in use... All costs, including those related to planning activities, must be reasonable and well documented. Reasonable costs are those that are necessary to obtain facilities comparable to those presently in use. The TA foresees the following activities, among others, as allowable for 800 MHz reconfiguration (subject to determination of reasonableness and appropriate documentation): planning costs associated with 800 MHz system inventory work; legal fees associated with contract negotiations; engineering fees for system reconfiguration; costs incurred for frequency planning and replacement equipment, where necessary.... Additionally, licensees must certify that cost estimates are the “minimum necessary” to achieve comparability with its existing facilities. Upon review and approval of the licensee’s cost estimate by Nextel and the TA, Nextel will initiate payment to cover these costs.... There is no predetermined “ceiling” on individual licensee reconfiguration costs. However, the TA will review all cost estimates submitted to ensure that they are reasonable, prudent, and directly related to obtaining comparable facilities as a result of the reconfiguration effort. The FCC has tasked the TA with reviewing proposed transactional costs (e.g., legal and engineering fees) that exceed two percent of the “hard” costs involved (e.g., equipment costs).

LAW FIRM and the COUNTY will together reasonably cooperate to secure timely reimbursement to the COUNTY of or direct payment to LAW FIRM of the fees and expenses for which Nextel is responsible. To the extent that Nextel is not held responsible for funding the COUNTY’S legal fees and expenses that arise under the AGREEMENT, they will be payable by the COUNTY in accordance with the terms of the AGREEMENT. The scope of services to be

provided by LAW FIRM under the AGREEMENT will not include any advice on matters or interpretation of California law, for which the COUNTY has advised LAW FIRM that COUNTY has adequate other legal resources and, (ii) on Federal communications law licensing-related matters, which matters the COUNTY anticipates handling using COUNTY staff, other co-counsel or other licensing specialists approved by the COUNTY. Also excluded from the scope of LAW FIRM'S engagement responsibilities on the Project are services that--due to their nature (e.g., engineering and other technical work with respect to network design, radio equipment retuning and replacement)--are generally outside of the professional experience of lawyers. Such services relate to the Project will be provided by other professional service firms or the COUNTY.

As provided in the Code of Professional Responsibility, LAW FIRM'S representation of the COUNTY is as an entity and does not constitute representation of any of the COUNTY'S officials (elected or appointed), employees or other constituents of the COUNTY. LAW FIRM will not undertake representation of any such persons on this matter without first consulting with COUNTY, and no such representation is presently contemplated.

The determination of and handling of potential and actual conflicts of interest shall be handled as specified in the AGREEMENT and otherwise as may be separately agreed between the COUNTY and LAW FIRM.

The COUNTY acknowledges that any estimate for the fees and costs provided by LAW FIRM under the AGREEMENT and the preparation thereof are by their nature inexact, subject to inaccuracy, and based on a number of factors, as to which information may be materially incomplete, uncertain and constantly changing and therefore actual costs may vary substantially from estimates. The COUNTY further understands and acknowledges that an estimate that LAW FIRM believes is reasonable will nevertheless not be binding upon LAW FIRM, provided that LAW FIRM agrees to provide notice and seek authorization of charges in excess of estimates as provided in the AGREEMENT.

The COUNTY shall be responsible to reimburse LAW FIRM for all costs of collection of amounts due LAW FIRM, including but not limited to reasonable attorneys' fees and expenses, court costs and costs incurred relating to any alternative dispute resolution mechanism utilized in the collection of amounts due. As to fees and disbursement payable by Nextel, the COUNTY hereby confirms that it does not object to the same policy of responsibility applying to payments due to LAW FIRM hereunder for services provided by LAW FIRM to the COUNTY that are reimbursable to COUNTY or payable TO LAW FIRM directly by Nextel. If Nextel does not timely pay or reimburse LAW FIRM'S fees and expenses as contemplated by the FCC Order and TA procedures, the AGREEMENT or any other commercial arrangement agreed between COUNTY or LAW FIRM and Nextel, COUNTY agrees that LAW FIRM may hold responsible and pursue reimbursement against Nextel to achieve prompt and timely payment of billing statements.

A search of LAW FIRM'S conflicts database does not reveal any direct conflicts of interest with COUNTY in the context of the anticipated interested parties in the Project. While LAW FIRM has no direct conflicts presently with the COUNTY'S interests in connection with the Project, it is possible that should LAW FIRM be retained by another entity participating in the

FCC-Ordered rebanding, there might arise a competition between or mutual interest of the COUNTY and such other client for the same available radio frequencies. LAW FIRM considers this very unlikely, and in any event does not intend to and will not represent two clients with respect to pending FCC licensing applications if those applications involve competing interests for the same frequencies. Nevertheless, in light of the foregoing, LAW FIRM has sought to include this paragraph in the AGREEMENT in order to comply with any applicable ethical obligations, including (in the event they may be determined to apply) those set forth in Rule 3-310 of the Rules of Professional Conduct of the State Bar of California which prohibit the representation of conflicting interests, or interests with respect to which we may have obtained confidential information, without the informed written consent of the affected parties. Such consent to this paragraph and other statements regarding conflicts of interest in the AGREEMENT may be inferred by the COUNTY'S execution of the AGREEMENT.

In accordance with those obligations, LAW FIRM hereby notifies the COUNTY of these circumstances and requests that the COUNTY give its informed written consent to, and waiver of, any conflict or potential conflict of interest arising out of or connected with such FCC licensees in connection with the Project or similar representation by LAW FIRM of other FCC licensees, as described above. LAW FIRM agrees to act in accordance with its ethical responsibilities in the course of LAW FIRM'S representation related to the Project.