

**COUNTY OF SAN MATEO
AGREEMENT WITH INDEPENDENT CONTRACTOR**

Agreement No. 17000-04-P735

Contractor Name and Address:

AT&T Wireless Services, Inc.

Suite 1500

651 Gateway Boulevard

South San Francisco, California 94080

Contractor: Upon completion of work or agreed-upon work periods, contractor will invoice each County Department individually. The master contact for this contract shall be:

Employee and Public Services, Purchasing Division

Attention: Purchasing Manager

Address: 455 County Center, EPS 129

Redwood City, CA 94063-1663

It is agreed between the County of San Mateo, California, and Contractor as follows:

Services to be performed by Contractor In consideration of the payments hereinafter set forth, Contractor shall provide cell phones and wireless communications services in accordance with the service and pricing schedule published from time to time in accordance with the "Western States Contracting Alliance" (Hereinafter "WSCA") Master Price Agreement No. 10-00115. Contractor shall ensure compliance with all state, federal and local laws or rules applicable to performance of the work required under this contract.

2. **Contract Term** The term of this Agreement shall be from October 1, 2004 to September 30, 2007 unless terminated earlier by either party, or in the unlikely event that the WSCA Master service and pricing schedule is not extended past its current June 30, 2005 expiration date. The parties shall likewise have the option to extend this contract for two additional one year terms.
3. **Payments** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein, County shall make payment to Contractor in the manner specified herein and in accordance to the WSCA pricing schedule. The County acknowledges and accepts that Contractor may modify said pricing schedule from time to time, but Contractor warrants that any pricing change would be applied equally to all public entities referencing the "Western States Contracting Alliance" Master Price Agreement No. 10-00115, and as such the County would not be singled out for any price increase, or denied any price decrease. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall total payment for services under this Agreement exceed Two Million Five Hundred (\$2,500,000) Dollars.
4. **Relationship of the Parties** Contractor agrees and understands that the work/services performed under this Agreement are performed as an Independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers or advantages of County employees.
5. **Workers' Compensation Insurance** The Contractor shall have in effect, during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.
6. **Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by himself/herself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified by Risk Management.

Contractor/Vendor shall take out and maintain during the life of the resultant Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by the resultant Agreement from any and all claims for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's/Vendor's operations under the resultant Agreement, whether such operations be by Contractor/Vendor or by anyone directly or indirectly employed by Contractor/Vendor. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

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|-----|-----------------------------------|------------------------------|
| (a) | Comprehensive General Liability | \$ 1,000,000.00/3,000,000.00 |
| (b) | Motor Vehicle Liability Insurance | \$1,000,000.00 |

If the resultant Agreement remains in effect more than one (1) year from the date of its original execution, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County Agreements given sixty (60) days' notice to the Contractor.

The County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

7. **Hold Harmless** Contractor agrees to indemnify and defend the County, its employees and agents from any and all claims, damages and liability in any way occasioned by or arising out of the negligence of the contractor in the performance of this agreement.
8. **Confidentiality** All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of County. All financial, statistical, personal, technical, and other data and information relating to the County's operations which is made available to the Contractor in order to carry out this Agreement shall be presumed to be confidential. Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as the County requires of its own personnel. The Contractor shall not, however, be required by this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement or is rightfully obtained from third parties.
9. **Non-Assignment** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of County, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement.
10. **Termination of Agreement** The County Purchasing Agent may, at anytime from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the County, by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty days from notice. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. In the event of termination, Contractor shall be paid for all work satisfactorily performed until termination, except where the contracting department determines the quality or quantity of the work performed is unacceptable. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.
11. **Payment of Permits/Licenses** It shall be the Contractor's responsibility to obtain any license, permit or approval required from any agency for work/services to be performed at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.
12. **Non-Discrimination** No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

Section 504 applies only to contractors who are providing services to member of the public. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of or be subjected to discrimination in the performance of this contract.

13. **Equal Benefits** With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
14. **Retention of Records** Contractor shall maintain all records related to this Agreement for no less than three years after the County makes final payment or after termination of this contract and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the County, the State of California and/or Federal grantor agencies.
15. **Merger Clause** This Agreement constitutes the sole Agreement Of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. References to the "Western States Contracting Alliance" Master Price Agreement No. 10-00115 refers and applies solely to the service and pricing schedule of that document. All subsequent modifications shall be in writing and signed by the County Purchasing Agent. This Agreement, or facsimile proposal of the Agreement, constitutes the entire Agreement between County and Contractor. Further, liability referenced to in section 6 is limited to Contractor's negligence during the Contractor's performance under this contract.
16. **Governing Law** This Agreement, including any exhibits, shall for all purposes be deemed subject to the laws of the State of California, and in the event of a lawsuit concerning this Agreement shall be venued in the County of San Mateo.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

Contractor's Signa~re

Date

Contractor's Name (Please Print)

I hereby certify that the services requested are necessary, that the selection process documentation is accurate, that all insurance certificates including Worker's Compensation are on file in this office, that Risk Management has approved any reductions in Contractor's insurance limits below \$1,000,000, and that no work will commence until this document is signed by the County Purchasing Agent.

Purchasing Agent, County of San Mateo

Date

Department or Division Head Approval

Date

Department or Division Head Name (Please Print)

Budget Unit

Distribution – 1 copy to each: Purchasing Agent, County Manager's Office, Controller, Contractor and Department
Short Form Agreement/Business Associate

v 6/24/04

COUNTY OF SAN MATEO
AGREEMENT WITH INDEPENDENT CONTRACTOR

Agreement No. 17000-04-P734

Contractor Name and Address:

Nextel of California, Inc. d/b/a Nextel Communications

1255 Treat Boulevard, Suite 800

Walnut Creek, California 94596

Contractor: Upon completion of work or agreed-upon work periods, contractor will invoice each County Department individually. The mastercontact for this contract shall be:

Employee and Public Services, Purchasing Division

Attention: Purchasing Manager

Address: 455 County Center, EPS 129

Redwood City, CA 94063-1663

It is agreed between the County of San Mateo, California, and Contractor as follows:

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5. **Workers' Compensation Insurance** The Contractor shall have in effect, during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.
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Contractor/Vendor shall take out and maintain during the life of the resultant Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by the resultant Agreement from any and all claims for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's/Vendor's operations under the resultant Agreement, whether such operations be by Contractor/Vendor or by anyone directly or indirectly employed by Contractor/Vendor. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

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|-----|-----------------------------------|---|
| (a) | Comprehensive General Liability | \$ 1,000,000.00/ 3,000,000.00, with the amount over and above \$2,000,000 through umbrella coverage |
| (b) | Motor Vehicle Liability Insurance | \$1,000,000.00 |

If the resultant Agreement remains in effect more than one (1) year from the date of its original execution, the parties may mutually agree to an increase in the amount of liability insurance to the level then customary in similar County Agreements given sixty (60) days' notice to the Contractor.

The County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

7. **Hold Harmless** "Contractor shall hold the County, its agents and employees harmless and shall indemnify the County, its agents and employees against any and all claims, suits, actions, liabilities and costs of any kind, including reasonable attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors while on the premises of the County or its agencies. Contractor shall not be liable for damages that are the result of negligence by the County or its employees. As a condition to the terms contained in this section, the County shall:
 1. give the Contractor prompt written notice of any claim;
 2. allow the Contractor to control the defense or settlement of the claim; and
 3. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim."
8. **Confidentiality** All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of County. All financial, statistical, personal, technical, and other data and information relating to the County's operations which is made available to the Contractor in order to carry out this Agreement shall be presumed to be confidential. Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as the County requires of its own personnel. The Contractor shall not, however, be required by this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement or is rightfully obtained from third parties.
9. **Non-Assignability** Neither party may assign this Agreement or any rights hereunder, without the prior written consent of the other party, which consent shall not be reasonably withheld, except that Contractor may assign this Agreement to any parent, subsidiary or affiliate of Contractor or to any purchaser of all or substantially all its assets upon written notification to Customer. Subject to the restrictions contained herein, this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties hereto.
10. **Termination of Agreement** The County Purchasing Agent may, at any time from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the County, by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty days from notice. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and upon written request of the County shall be promptly delivered to the County. In the event of termination, Contractor shall be paid for all work satisfactorily performed until termination.
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12. **Non-Discrimination** No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

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name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

Section 504 applies only to contractors who are providing services to member of the public. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract.

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THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

Contractor's Signature

09/07/04
Date

H. Leon Frazier
Contractor's Name (Please Print)

I hereby certify that the services requested are necessary, that the selection process documentation is accurate, that all insurance certificates including Worker's Compensation are on file in this office, that Risk Management has approved any reductions in Contractor's insurance limits below \$1,000,000, and that no work will commence until this document is signed by the County Purchasing Agent.

Purchasing Agent, County of San Mateo

Date

Department or Division Head Approval

Date

Department or Division Head Name (Please Print)

Budget Unit