

RESOLUTION AUTHORIZING A CONTRACT WITH **SPRINT SOLUTIONS, INC.** FOR THE PURCHASE COUNTY-WIDE CELLULAR PHONES AND WIRELESS DATA SERVICES  
**(Purchasing Department) (Estimated Annual Amount \$ 530,000)**

**WHEREAS**, competitive sealed bids were received and opened by the Purchasing Department on October 16, 2011.

**WHEREAS, Sprint Solutions, Inc.** was the lowest and best bidder for cellular phones and wireless data service.

**WHEREAS**, the negotiated contract, attached pricing plans and equipment listings which are fully incorporated herein, and are binding on both parties.

**WHEREAS**, this contract is a cooperative contract and may be utilized by any political subdivision within the State of Ohio with all discounts and services equal to those provided to Franklin County.

**WHEREAS**, The Purchasing Department recommends that the bid submitted by **Sprint Solutions, Inc.** as the lowest and best bid for cellular phone service.

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS, FRANKLIN COUNTY, OHIO;

The contract with **SPRINT SOLUTIONS, INC.** for the purchase of cellular phones and wireless data services is hereby approved. Various purchase orders have been opened on a department by department basis to encumber funds as needed.

AGENCY	Estimated Annual Contract Amount
Purchasing Department	\$530,000.00

Prepared by: Karl Kuespert

cc: Commissioners  
All county agencies

**SIGNATURE SHEET**

Resolution No. 0524-12

July 24, 2012

**RESOLUTION AUTHORIZING A CONTRACT WITH SPRINT SOLUTIONS, INC.  
FOR THE PURCHASE OF COUNTY-WIDE CELLULAR PHONES AND WIRELESS  
DATA SERVICES.**

**(Purchasing)**

**(\$530,000.00)**

Upon the motion of Commissioner John O'Grady, seconded by Commissioner Marilyn Brown:

**Voting:**

<b>Paula Brooks, President</b>	<b>Aye</b>
<b>Marilyn Brown</b>	<b>Aye</b>
<b>John O'Grady</b>	<b>Aye</b>

Board of County Commissioners  
Franklin County, Ohio

**CERTIFICATE OF CLERK**

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon by the Board of County Commissioners, Franklin County, Ohio on the date noted above.



Debra A Willaman, Clerk  
Board of County Commissioners  
Franklin County, Ohio

## CONTRACT

Between

FRANKLIN COUNTY

And

**SPRINT SOLUTIONS, INCORPORATED**

This Contract entered into by and between **Sprint Solutions, Inc.**, as contracting agent for the affiliated Sprint and Nextel entities providing the Products and Services ("hereafter referred to as Sprint"), and the Franklin County Board of Commissioners (hereafter referred to as "County") to provide Cellular Phones and Wireless Data Services pursuant to and under the authority of Resolution No. 0524-12 dated July 24, 2012.

For the mutual considerations herein specified, the County and Sprint have agreed and do hereby agree as follows:

### **Section 1 Administrative Requirements**

This Contract consists of the complete Request for Proposal, including this Contract, all documents requiring Offeror's signatures, and any written amendments/addendums to the RFP; the Offeror's complete competitive sealed proposal, including proper modifications, clarifications, and samples; and applicable resolutions, purchase orders and/or other ordering documents.

Any inconsistency in this contract shall be resolved by giving precedence in the following order:

- 1) The signed contract document;
- 2) Referenced Terms;
- 3) The RFP response submitted by the Sprint; and
- 4) The County's original Request for Proposal.

### **1a Attachments**

The following attachments are incorporated into this Agreement by reference:

- Attachment A: Wireless Services Term and Volume Discount
- Attachment B: Wireless Services Product Annex
- Attachment C: Sprint Mobile Integration Product Annex
- Attachment D: Sprint Data Link Product Annex
- Attachment E: Acceptable Use Policy
- Exhibit 1: Pricing

### **1b Cooperative Purchasers**

The County authorizes all State of Ohio governmental entities and political subdivisions, as used in Ohio Revised Code Section 9.48, including local agencies, municipal corporations, townships, counties, villages, school districts and public institutions of higher education (hereafter referred to as "Cooperative Purchasers") to use this Contract to obtain Sprint Products and Services through the issuance of purchase orders and without further formal agreement. Such Cooperative Purchaser's submission of a purchase order to Sprint seeking the terms provided hereunder shall act as such Cooperative Purchaser's acceptance of, and agreement to be bound by, the terms and conditions contained herein in the same manner as they apply to the County. The County shall not be held liable for the obligations between the Cooperative Purchaser and Sprint.

### **Section 2 Pricing and Delivery of Services**

The initial pricing for this Contract will be based on the cellular phone and wireless data services pricing that was submitted as Appendix E Pricing in Sprint's proposal and is attached as Exhibit 1 to this contract.

### **Section 3 Term of Contract**

This Contract is binding once signed by both parties. The term of the Contract is thirty-six (36) months ("Term"), beginning on the Effective Date. The term may be extended upon the mutual written agreement of both parties for up to one consecutive 24 month period.

## **Section 4 Miscellaneous Terms**

### **Section 4.01 Resale**

The County acknowledges and agrees that this is a retail purchase agreement for use only by the County and its other Sprint-authorized end users as set forth in this Agreement. The County may not resell or lease wireless Services under this Agreement. Nothing herein shall be construed to limit the County's ability or rights to sell or otherwise dispose of any Products it has purchased in any manner it chooses; provided that the County does not engage in any activity that could be construed as wholesale or bulk purchasing and reselling of Products. Notwithstanding the foregoing, The County may participate in the Sprint Wireless Recycling Program.

### **Section 4.02 Third Party Equipment or Software**

The County is responsible for any items not provided by Sprint (including but not limited to equipment or software) that impair Product or Service quality. Upon notice from Sprint of an impairment, the County will promptly cure the problem. The County will continue to pay Sprint for Products and Services during such impairment or related suspension. If the impairment interferes with the use of the Sprint's network by Sprint or third parties, Sprint, in its reasonable discretion, may suspend or disconnect the affected Products and Services without advance notice to the County, although Sprint will provide advance notice where practical. At the County's request, Sprint will troubleshoot the impairment at Sprint's then-current time and materials rates. Sprint is not liable if a commercially reasonable change in Products or Services causes equipment or software not provided by Sprint to become obsolete, require alteration, or perform at lower levels

### **Section 4.03 Products**

Sprint does not manufacture Products and, except as provided in this Agreement, is not responsible for the acts or omissions of the original equipment manufacturer.

### **Section 4.04 Licensing Requirements**

Where software is provided with a Product or Service, the County is granted a non-exclusive and non-transferable license or sublicense to use the software, including any related documentation, solely to enable the County to use the Products and Services in accordance with the applicable licensing requirements. Software licensing terms and conditions of Sprint's software vendors are provided by Sprint or posted at [www.sprint.com/ratesandconditions](http://www.sprint.com/ratesandconditions) or otherwise provided to the County through click or shrinkwrap agreements. Sprint may suspend, block or terminate the County's use of any software if the County fails to comply with any applicable licensing requirement.

### **Section 4.05 Prohibitions**

The County is not granted any right to use any software on behalf of third parties or for time share or service bureau activities. No rights are granted to source code and the County may not reverse engineer, decompile, modify, or enhance any software. Subject to the terms and conditions in the licensing requirements subsection above, Sprint or its suppliers retain title and property rights to Sprint-provided software. Upon termination or expiration of this Agreement or the applicable Service, any applicable software license will terminate and the County will surrender and immediately return the Sprint-provided software to Sprint; provided that the County is not required to return the software embedded in Products sold to the County under this Agreement.

### **Section 4.06 Use of Name, Service Marks, Trademarks**

Neither party will use the name, service marks, trademarks, or carrier identification code of the other party or any of its Affiliates for any purpose without the other party's prior written consent. Notwithstanding the foregoing and subject to the County's written consent with respect to each use, Sprint may use the County's name and contact information as a customer reference.

### **Section 4.07 The County and Cooperative Purchaser Responsibilities**

**4.07a Installation.** For Products or Services requiring on-site installations, the County will reasonably cooperate with Sprint or Sprint's agents to enable Sprint or its agents to install the Products or Services. The County is responsible for damage to Sprint-owned Products and Services located on the County's premises, excluding reasonable wear and tear or damage caused by Sprint.

#### **4.07b Use of Products and Services**

**Acceptable Use Policy.** If the County purchases Products or Services, the County must conform to the Acceptable Use Policy ("AUP") attached hereto as Attachment E. Sprint may amend the AUP from time to time and any changes made to the AUP will be presented to the Director, Purchasing Department, who will post the updated AUP to the Purchasing portal in the same manner as changes are posted to the rate plans in Section 5.01 below. However, in the event that any changes made in the AUP would have a material adverse effect on

the County's use of the Services, then the County will have the right to terminate the affected Service(s) without early termination liability.

- (a) **Abuse and Fraud.** The County will not use Products or Services: (1) for fraudulent, unlawful or destructive purposes, including, but not limited to, unauthorized or attempted unauthorized access to, or alteration, abuse, or destruction of information; or (2) in any manner that causes interference with Sprint's or another's use of the Sprint network. The County will cooperate promptly with Sprint to prevent third parties from gaining unauthorized access to the Products and Services via the County's facilities.
- (b) **Permits, Licenses and Consents.** The County and Cooperative Purchaser will obtain all required permits, licenses, or consents that the County and Cooperative Purchaser are required to obtain to enable Sprint to provide (e.g., landlord permissions, tax exemption certificates, software licenses, or local construction licenses) the Products and Services. This provision does not include permits, licenses, or consents related to Sprint's general qualification to conduct business.

#### **Section 4.08 Standard of Care**

Sprint shall discharge its respective obligations under the Agreement with that level of reasonable care which a similarly situated business would exercise under similar circumstances. As an inducement to the County to enter into this Agreement, Sprint represents and warrants the following to the County:

- (a) It (i) is a duly incorporated, organized and validly existing under the laws of, and in good standing with the its state of incorporation; (ii) has full authority to grant the County the rights granted in this Agreement; (iii) has all requisite power and authority to execute and deliver, and to perform all of its obligations under this Agreement.
- (b) It shall execute any and all documents or contracts with third parties in its name and shall not represent itself as conducting business on behalf of the County or any of its agencies.
- (c) It has filed all tax returns (federal, state and local) required to be filed and has paid all taxes shown thereon to be due and all property taxes due, including interest and penalties, if any.
- (d) It is in compliance in all material respects with all laws, regulations and requirements applicable to its business and has obtained all authorizations, consents, approvals, orders, licenses, exemptions from, and has accomplished all filings or registrations or qualifications with, any court or governmental authority that are necessary for the transaction of its business.

#### **Section 4.09 Affirmative Covenants**

Until the termination or expiration of this Agreement, Sprint shall maintain its existence and continue to be a duly incorporated legal entity that is and organized and validly existing under the laws of its incorporation and duly qualified to do business in, the State of Ohio to the extent required by applicable law. Sprint will discharge its obligations under this Agreement with that level of reasonable care which a similarly situated provider would exercise under similar circumstances.

#### **Section 4.10 Indemnification**

- (a) **Indemnification.** Sprint will indemnify and defend the County and all County Agencies, including public officials, and employees acting in the course of their employment, but not as Members, from any and all third-party claims for damages, losses, liabilities or expenses, including reasonable attorney's fees, arising directly from the performance of this Agreement and relating to personal injury, death, or damage to tangible personal property that is alleged to have resulted, in whole or in part, from the negligence or willful misconduct of Sprint or its subcontractors, directors, officers, employees or authorized agents.
- (b) **Intellectual Property.** Sprint will indemnify and defend the County, its directors, officers, employees, agents, and their successors against third party claims enforceable in the United States alleging that Services as provided infringe any third party United States patent or copyright or contain misappropriated third party trade secrets. Sprint's obligations under this section will not apply to the extent that the infringement or violation is caused by (i) functional or other specifications that were provided by or requested by the County; or (ii) the County's continued use of infringing Services after Sprint provides reasonable notice to the County of the infringement.

For any third party claim that Sprint receives, or to minimize the potential for a claim, Sprint may, at its option and expense, either;

- (i) procure the right for the County to continue using the Services;
- (ii) replace or modify the Services with comparable Services; or

(iii) terminate the Services.

- (c) **Rights of Indemnified Party.** To be indemnified, the County must (A) give Sprint prompt written notice of the claim, (B) give Sprint full and complete authority, information and assistance for the claim's defense and settlement, and (C) not, by any act including but not limited to any admission or acknowledgement, materially prejudice Sprint's ability to satisfactorily defend or settle the claim. Sprint will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. The County will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but Sprint will retain sole control of the claim's settlement or defense.
- (d) **Exclusive Remedy.** The provisions of this "Indemnification" Section states the entire liability and obligations of Sprint and any of its Affiliates or licensors, and the exclusive remedy of the County, with respect to any claims identified in this section.

#### **Section 4.11 Ethics**

Sprint agrees that it shall take reasonable steps to ensure that its employees do not voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work and shall comply with the applicable provisions of the Ohio Ethics laws.

#### **Section 4.12 Public Record and Treatment of Confidential and Proprietary Information**

In the event the County receives any such request for any Confidential Information, it will promptly notify Sprint of the request to enable Sprint to take whatever action it deems appropriate to seek protection from disclosure. The County will take the necessary steps to fulfill the request for information in accordance with the Board of Commissioners Public Records Policy.

#### **Section 4.13 Subcontracting**

Subcontracting is permissible under the terms of this Contract. Sprint shall be the primary contractor who will be performing the work. Sprint must identify its subcontractors and joint ventures for performance of this Contract. Sprint must provide updates to its list of subcontractors and joint ventures during the term of this Contract. Sprint shall not use any subcontractor who has been subject to action that limits the subcontractor's right to do business with the local, state, or federal government. County reserves the right to deny use of a subcontractor(s) if County determines that Sprint will not be the primary contractor who will be performing the work under the Contract.

#### **Section 4.14 Consent to Assign**

Sprint will not assign any of its rights under this Contract unless County consents to the assignment, in writing including any assignment through a merger or other corporate reorganization, except that Sprint may assign this Contract to a parent company, controlled Affiliate, Affiliate under common control or an entity that has purchased all or substantially all of its assets upon written notice to the County. Any purported assignment made without County's written consent is void and may be subject to termination of the contract. County may assert against an assignee any claim or defense County may have against the assignor.

Sprint shall notify the County as soon as possible, but no later than sixty (60) days, prior to the Company converting into, merging or consolidating with another corporation, person or entity.

#### **Section 4.15 Record Keeping**

Sprint will keep all financial records consistent with Generally Accepted Accounting Principles (GAAP). During the period covered by the contract and is required to provide the County Purchasing Department, Board of Commissioners, or their designated representative, authorized representatives (for Sprint), and any person or agency instrumentally involved in providing financial support for the contract work access and right to examine any books, documents, papers, or records related to this contract. Claims documentation may be reviewed through a formal Audit and are not subject to the work access requirements set forth in this paragraph.

#### **Section 4.16 Insurance Requirements**

**ALL INSURANCE COMPANIES PROVIDING COVERAGE SHALL BE LICENSED TO DO BUSINESS IN THE STATE OF OHIO.**

Throughout the contract period, Sprint must maintain a comprehensive insurance program affording as a minimum the items indicated below: A Certificate of Insurance reflecting the required coverage and amount must be submitted with Sprints response. The County Board of Commissioners must be identified as *additional insured, project name, and the*

**bid number** must be included on the Certificate of Insurance. If there is any change in the Sprint's insurance carrier or liability amounts, a new certificate must be provided to the County Purchasing within seven (7) calendar days of change.

**Comprehensive General Liability:** up to \$1,000,000 single limit occurrence including coverage for: a) Personal Injury Liability: all sums, which the company shall become legally obligated to pay as damages because of bodily injury, sickness, or disease including death at any time resulting there from, sustained by any person other than its employees; b) Broad form Property Damage Liability; c) products and completed operations; d) premises and completed operations; and e) contractual liability insuring the obligations assumed by the Vendor under the Contract. This insurance does not apply or shall not be construed as being applicable to liability for damages arising out of bodily injury to any person or damage to any property of others resulting from the negligence of the County Board of Commissioners, its officers, employees or agents.

**Automobile Liability Insurance:** all sums, which the company shall become legally obligated to pay as damages because of injury to or destruction caused by occurrence arising out of ownership, maintenance or use of any automobile.

**Excess Annual Aggregate Limit:** \$3,000,000 dollars

During the term of this Contract and any renewal thereto, the Sprint, and any agent of the Sprint, at its sole cost and expense, shall maintain the required insurance coverage as described in the Contract. County may require the Sprint to provide respective certificate(s) of insurance in order to verify coverage. Failure to provide a requested certificate within a seven (7) calendar day period may be considered as default.

## **Section 5 Time of Performance**

### **Section 5.01 Contract Extension and Cellular and Wireless Data Plan Changes**

This contract may be extended for one additional 24 month period.

After contract award, any changes made to the pricing of the cellular phone or wireless data service plans or changes to makes and models of the cell phones offered under the contract will be made in writing to the Director of the Purchasing Department. If the new rate plans and cell phones are accepted, the Purchasing Director will post the new plans and cell phones to the Purchasing portal with a memo to all County agencies. The Contractor will apply any and all applicable discounts associated with new plans to current subscribers and further agrees to transfer any agency to new plans as requested. All transfers to new plans will be completed without penalty fees being assessed.

### **Section 5.02 Contract Extension at the End of Any Contract Period**

The contract shall be automatically extended for 90 days, at the option of the County, to allow for the award of a new proposal or completion of the contract extension.

## **Section 6 Invoicing, Payment and Taxes**

### **Section 6.01 Standard Invoice and Payment**

The Contractor shall submit an invoice to the ordering agency upon shipment of the supplies or performance of service as described on the purchase order. Except when using Electronic Data Interchange (EDI) processes, and unless otherwise requested by the ordering agency, the invoice must be a "proper invoice" to receive consideration for payment. A "proper invoice" is defined as being free of defects, discrepancies, errors, or other improprieties. Improper invoices will be returned to Sprint noting the areas of discrepancy.

Invoice shall include, at a minimum:

- 1) Name and address of Sprint
- 2) Services provided and Billing period
- 3) Hours provided as stated in contract pricing
- 4) Unit cost (must match contract pricing)
- 5) Remit to address
- 6) Customer service telephone number

### **Section 6.02 Payment Due Date**

The County normally makes payments within 45-days from the day the invoice is received and / or acceptance of supplies or services. Agencies only process an invoice for payment after delivery and acceptance of the ordered supplies or services have been completed or transpired. The County will not pay late fees, interest, or other penalties for later payment, unless otherwise stated. Any entity authorized to utilize this Contract, outside the responsibility of The County, is responsible for all orders, invoices, payment, and / or tracking.

**Section 6.03 Taxes**

Franklin County and the agencies therein responsible for are exempt from all federal, state, and local taxes. Participating Franklin County agencies will not pay any taxes on supplies or services purchased from a Contractor, unless the Special Contract terms and conditions state otherwise. A tax-exempt certificate will be provided on request by the Offeror receiving the award.

**Section 7 Contract Administration and Reports**

**Section 7.01 Contract Administration**

The County Purchasing Department will be responsible for the administration of the Contract and will monitor Sprint's performance and compliance with the terms, conditions, and specifications of the Contract. If any agency or cooperative contract user observes any infraction(s), such shall be documented and conveyed to the Purchasing Department for remedy. Sprint will be notified by Purchasing of any such infraction and failure of Sprint to rectify the infraction(s) may result in Sprint being deemed in default, pursuant to the "Termination for Default" provisions of this a Contract.

**Section 7.02 Usage Reports**

The County may request various reports regarding performance of this contract in accordance with Appendix F Scope of Service. The County may also request various reports concerning the cooperative contract users and the services requested by said users, provided that such reports include only anonymized and aggregated data that complies with any applicable CPNI and other privacy laws, regulations and rules.. Sprint will respond to such requests in a timely manner and at no charge to the County.

**Section 7.03 Quality Assurance**

Sprint is responsible for the quality of the services provided under this agreement to the County. Sprint is responsible to maintain all of the required certifications and qualifications, if any, stated in Appendix F, subject to any clarifications described in Sprint's Response to the original Request for Proposal. Failure to maintain the minimum requirements of licensing shall be considered default of the Contract. Notwithstanding the foregoing, Sprint is not liable for (a) coverage and Wireless Service quality problems caused by atmospheric, geographic or topographic conditions or other conditions beyond Sprint's control including the failure of other service providers; (b) interruption and unavailability of Wireless Services due to coverage, capacity, Product failure or other limitations that may occur in the transmission or attempted transmission of Wireless Services; or (c) outages or Wireless Service disruptions occurring as a result of a public safety emergency.

**Section 7.04 Warranties**

EXCEPT AS, AND ONLY TO THE EXTENT, EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE APPLICABLE SERVICE LEVEL AGREEMENT, PRODUCTS AND SERVICES ARE PROVIDED "AS IS." SPRINT DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES RELATED TO EQUIPMENT, MATERIAL, SERVICES, OR SOFTWARE.

**Section 8 Contract Cancellation; Termination; Remedies**

**Section 8.01 Contract Cancellation**

The County may cancel this Contract Upon any one of the following events. The cancellation will be effective on the date delineated by County.

**(a) 90-Day Notice Termination**

The County reserves the right to terminate the resulting contract immediately by giving the vendor 90-days written notification. If this Contract is terminated for convenience, the County shall be liable only for payment under the payment provisions of the resulting contract for goods and services rendered before the effective date of termination.

**(b) Non-Appropriation of Funds**

This Contract is contingent upon the County budgeting and appropriating the funds on an annual basis necessary for the continuation of this Contract in any contract year. In the event that the funds necessary for the continuation of this Contract are not approved for expenditure in any year, this Contract shall terminate on the last day of the fiscal year in which funding was approved, without penalty to the County. The County will provide the Sprint with written notification within 10 business days after being notified that the funding for the Products and Services is no longer approved.

**Section 8.02 Termination for Default**

**8.02a Termination for Default.** The County may, subject to the paragraphs below, by written notice of default to Sprint, terminate this contract in whole or in part if Sprint materially fails to:

- (1) Provide the Product or Service within the time specified in this contract or any extension period;
- (2) Make progress, so as to endanger performance of this Contract the services required under this Contract; and.
- (3) The County provides Sprint with written notice of the failure and a reasonable opportunity to cure within 30 days from receipt of notice, Sprint fails to cure the material failure within the 30-day cure period, and Customer provides Sprint with written notice of Sprint's failure to cure and Customer's election to terminate the affected Product or Service. Sprint's material failure does not include a failure caused by Customer or a failure identified in the "Force Majeure" section.

**8.02b Force Majeure.** Neither party will be liable for any delay, interruption or other failure to perform under this Contract if the failure to perform arises from causes beyond its reasonable control (a "Force Majeure Event"). Examples of Force Majeure Events include, but are not limited to, acts of God or of the public enemy, court orders and other acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, wars, riots, terrorist activities, civil commotions, explosions, strikes and labor disputes, inability to obtain parts or equipment from third party suppliers, cable cuts by third parties, a LEC's activities, and other acts of third parties. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the party.

**8.02c Failure of Subcontractor to Perform.** If failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of the Sprint and subcontractor, and without fault or negligence of either, the Sprint shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Sprint to meet the required delivery schedule.

**Section 8.03 Sprint Right to Terminate**

Sprint may suspend or terminate Products or Services or this Agreement immediately if: (1) the County fails to cure its default of payment terms of this Agreement; (2) the County fails to cure any material breach of this Agreement within 30 days after receiving Sprint's written notice of such breach; (3) the County fails to comply with applicable law or regulation and the County's noncompliance prevents Sprint's performance under the Agreement; (5) the County fails to comply with the resell restrictions contained in Section 1.4 "Resale".

If Sprint terminates this Agreement under this "Sprint Right to Terminate" or Termination section, the County will be liable for any Products and Services provided up to the date of termination, whether or not invoiced by the termination date, as well as any applicable charges identified in the "Effects of Termination".

**Section 8.04 Limitations of Liability****8.04a Direct Damages**

Each party's maximum liability for damages caused by its failure(s) to perform its obligations under this Agreement (other than Service disruptions) is limited to: (A) proven direct damages for claims arising out of personal injury or death, or damage to real or tangible personal property, caused by the party's negligent or willful misconduct; or (B) proven direct damages for all other claims arising out of this Agreement, excluding Service disruptions, not to exceed in the aggregate, in any 12 month period, an amount equal to the County's total net payments for the affected Services purchased in the 6 months prior to the event giving rise to the claim. The County's payment obligations and Sprint's indemnification obligations under this Agreement are excluded from this provision.

**8.04b Consequential Damages**

NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT. CONSEQUENTIAL, INCIDENTAL, AND INDIRECT DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

**8.04c Wireless Service Outages and Product Failures**

Sprint's maximum liability for any loss or damage arising out of a wireless Service outage or wireless Product failure is limited to: (a) a prorated portion of the applicable MRC based on the time period wireless Services are not available, and (b) a refund of the net purchase price of affected wireless Products.

**8.04d Unauthorized Access / Hacking**

Sprint is not responsible for unauthorized third party access to, or alteration, theft, or destruction of, the County's data, programs or other information through accident, wrongful means or any other cause while such information is stored on or transmitted across Sprint network transmission facilities or County premise equipment.

**8.04e Content**

Sprint is not responsible or liable for the content of any information transmitted, accessed or received by the County through Sprint's provision of the Products and Services, excluding content originating from Sprint.

**8.04f Sprint Disclaimers**

Sprint is not responsible for any loss, liability, damage, or expense, including attorney's fees, resulting from any third party claims alleged to arise in any way from:

- (a) Coverage and wireless Service quality problems caused by atmospheric, geographic or topographic conditions or other conditions beyond Sprint's control including the failure of other service providers;
- (b) Interruption and unavailability of wireless Services due to coverage, capacity, Product failure or other limitations that may occur in the transmission or attempted transmission of wireless Services;
- (c) Outages or wireless Service disruptions occurring as a result of a public safety emergency;
- (d) The content of any information transmitted by, accessed, or received through, Sprint's provision of the Products and Services to the County, including, but not limited to, claims: (A) for libel, slander, invasion of privacy, infringement of copyright, and invasion or alteration of private records or data; (B) for infringement of patents arising from the use of equipment, hardware or software not provided by Sprint; or (C) based on transmission and uploading of information that contains viruses, worms, or other destructive media or other unlawful content;
- (e) The County's breach of the licensing requirements in the Software License section;
- (f) The County's failure to comply with any provision of the Use of Products and Services section; or
- (g) Sprint's failure to pay any tax based on the County's claim of a legitimate exemption under applicable law.

**Section 9 Certifications and Affidavits****Section 9.01 Sprint's Warranty against an Unresolved Finding for Recovery**

Ohio Revised Code (O.R.C.) §9.24 prohibits the County from awarding a contract to any contractor against whom the Auditor of the State has issued a finding for recovery if the finding for recovery is "unresolved" at the time of the award. By signing this contract, Sprint warrants that it is not now, and will not become subject to an "unresolved" finding for recovery under O.R.C. §9.24, and agrees that it shall not take any action that would result in an unresolved finding for recovery under such section.

**Section 9.02 Suspension and Debarments**

The County will not award a Contract for goods or services, funded in whole or in part with Federal funds, to a person or vendor who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties Listing System <https://epls.arnet.gov/>.

**Section 9.03 Legal Compliance**

Sprint must agree to comply with all applicable local, state, and federal laws in the performance of this including applicable state and federal laws regarding drug-free work places. Sprint will be required to accept full responsibility for payment of all taxes and insurance premiums including, but not limited to; Unemployment Compensation insurance premiums, Workers' Compensation, all income tax deductions, Social Security deductions, and any other taxes or payroll deductions required for all employees engaged by Sprint in the performance of this Contract.

**Section 9.04 Workers' Compensation Provision**

Sprint shall be required to carry Workers' Compensation Liability Insurance as required by Ohio law for any work to be performed within the state of Ohio, as applicable by law. Unless otherwise listed in the proposal specifications, Sprint will be required to provide said certificate within seven (7) calendar days after notification to award to: Franklin County, Purchasing Department, 25<sup>th</sup> Floor, 373 S. High St., Columbus, OH 43215-4599. Failure to provide certificate within the stated time period may deem Sprint as non-responsive and dismissal of award recommendation. Failure to maintain Workers' Compensation Liability Insurance coverage as required by law and any renewal thereto will be considered as a default.

**Section 9.05 Non-Collusion Certification**

By the signature affixed on Appendix A Exhibit 1 (*Non-Collusion Affidavit*) of the Proposal Sprint certifies that it has not colluded, conspired or agreed, directly or indirectly, with any Offeror or person, to put in a sham proposal; or colluded or conspired to have another not proposal and has not in any manner, directly or indirectly, sought by agreement or collusion

or communication or conference, with any person to fix the proposals price of its proposal or any other Offeror, or that of any other Offeror, or to secure any advantage against any Offeror or any person or persons interested in this Contract and that all statements contained in this Contract are true; and further, that Sprint has not, directly or indirectly, submitted this Contract, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.

#### **Section 9.06 Non-Discrimination / Equal Opportunity Provisions**

By the signature affixed on Appendix A Exhibit 2 (*Non-Discrimination / Equal Opportunity Affidavit*), Sprint certifies that it complies with all applicable laws regarding Non-Discrimination / Equal Opportunity. Sprint will comply with §125.111 of the Ohio Revised Code, which requires the following:

*That in the hiring of employees for the performance of work under the contract or any subcontract no contractor or subcontractor shall, by reasons of race, color, religion, sex, age, handicap, national origin or ancestry, discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the contract relates.*

*That no contractor, subcontractor, or any person acting on behalf of any contractor or subcontractor shall, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the contract on account of race, color, religion, sex, age, handicap, national origin, or ancestry.*

*All contractors who contract with the state or any of its political subdivisions for materials, equipment, supplies, contracts of insurance, or services shall have a written affirmative action program for the employment and effective utilization of economically disadvantaged persons, as defined in §Section 122.71 of the Ohio Revised Code. Annually, each such contractor shall file a description of the affirmative action program and a progress report on its implementation with the Ohio Civil Rights commission and the Minority Business Development Office established under §Section 122.92 of the Ohio Revised Code.*

#### **Section 9.07 Delinquent Personal Property Taxes**

By the signature affixed on Appendix A Exhibit 3 (*Delinquent Personal Property Taxes*) of the Proposal, Sprint certifies that they are not charged with delinquent personal property taxes on the general list of personal property in Franklin County, Ohio, or any other counties containing property in the taxing districts under the jurisdiction of the Auditor of Franklin County, Ohio.

#### **Section 9.08 Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization**

Pursuant to Ohio Revised Code Section 2909.21, Terrorism requires that any contract that will result in a Contractor receiving funding in an aggregate amount greater than \$100,000 annually shall certify that it does not provide material assistance to any organization on the United States Department of State Terrorist exclusion list. ***Prior to award*** of the contract, the successful Contractor shall complete the DMA Form (attached Appendix A-4). Affixing a signature on Appendix A Exhibit 4 (Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization) of the Proposal, the Contractor Sprint certifies that it does not provide material assistance to any organization on the list United States Department of State Terrorist Exclusion List, and that failure to complete the form or answer "yes" to any question shall serve for the purposes of this affidavit as a disclosure of the provision of assistance to an organization that is listed on the terrorist exclusion list (attached with the DMA form).

### **Section 10 Special Considerations**

#### **Section 10.01 Confidentiality**

Each party acknowledges that performance of this Contract may involve access to and disclosure of data, rates, procedures, materials, lists, systems and information (collectively "Confidential Information") belonging to the other. Except as set forth in the next paragraph, no Confidential Information shall be disclosed to any third party other than representatives of such party who have a need to know such Information, provided that such representatives are informed of the confidentiality provisions hereof and agree to abide by them. All such Information must be maintained in strict confidence.

The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (A) is in the possession of the Recipient at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (B) is or becomes publicly known, through no wrongful act or omission of the Recipient; (C) is received without

restriction from a third party free to disclose it without obligation to the Discloser; (D) is developed independently by the Recipient without reference to the Confidential Information; (E) is required to be disclosed by law, regulation, or court or governmental order; or (F) is disclosed with the prior written consent of the Discloser.

Notwithstanding the provisions of the previous paragraph, the Sprint understands and agrees that any Confidential Information may become subject to a Public Request for Information under the of Ohio Revised Code Section 149.43. In the event the County receives any such request for any Confidential Information, it will promptly notify Sprint of the request to enable Sprint to take whatever action it deems appropriate to seek protection from disclosure. Sprint understands that the County is not subject to the Federal Freedom of Information Act requirements.

If the Contractor fails to take any action within ten (10) days of such notice, the County may make such disclosure without any liability to the Contractor.

#### **10.01a Customer Proprietary Network Information**

As Sprint provides Products and Services to the County, Sprint develops information about the quantity, technical configuration, type and destination of Products and Services the County uses, and other information found on the County's bill ("Customer Proprietary Network Information" or "CPNI"). Under federal law, the County has a right, and Sprint has a duty, to protect the confidentiality of CPNI. For example, Sprint implements safeguards that are designed to protect the County's CPNI, including using authentication procedures when the County contacts Sprint. For some business accounts with a dedicated Sprint representative, Sprint may replace standard authentication measures with a pre-established point of contact for the County.

#### **10.01b Privacy**

Sprint's privacy policy, as amended from time to time, is available at [www.sprint.com/legal/privacy.html](http://www.sprint.com/legal/privacy.html). The privacy policy includes information about Sprint's customer information practices and applies to the provisioning of the Products and Services.

#### **Section 10.02 Governing Law/Venue**

This Contract shall be governed by the laws of the State of Ohio (regardless of the laws that might be applicable under principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect and performance. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Franklin County, Ohio and the parties hereby consent to the jurisdiction of such courts.

#### **Section 10.03 Entire Agreement/Amendment/Waiver**

This Contract and its exhibits and schedules and any documents referred to herein or annexed hereto constitute the complete understanding of the parties. This Contract shall not be changed, modified, terminated or amended except by a writing signed by a duly authorized officer of each party to this Contract. Any waiver must be in writing. Any waiver shall constitute a waiver of such right or remedy only and not of any other right or remedy of the waiving party. The failure to exercise any right under this Contract does not constitute a waiver of the party's right to exercise that right or any other right in the future. For purposes of any amendments or waivers, such amendment and waivers shall only be binding against the County if signed by the Board of County Commissioners.

#### **Section 10.04 Notices**

All notices and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered, or sent by overnight express courier, or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the address set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision. If either overnight express courier or United States mail delivery is not available or delivery is uncertain, then notices may be given by telecopier or by e-mail. Notice shall be sent to the following addresses:

To Sprint:	Sprint Solutions, Inc. Attention: Contracts Manager 12502 Sunrise Valley Drive, Mailstop: VARESA0208 Reston, VA 20196 Telephone (703) 433-8581 Facsimile: (703) 433-8798
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If to the County: Franklin County Purchasing Department  
 Attention: Purchasing Director  
 373 S. High Street, 25<sup>th</sup> Floor  
 Columbus, OH 43215

#### Section 10.05 Time is of the Essence

The time limits and time lines set forth herein are of the essence of this Agreement. Sprint has reviewed and approved all such time limits and time lines and confirms that all such limits are reasonable periods of time for its performance hereunder.

#### Section 10.06 Severability

If any provision of this Contract is found to be unenforceable, this Contract's unaffected provisions will remain in effect and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.

#### Section 10.07 URLs and Successor URLs

References to Uniform Resource Locators (URLs) in this Contract include any successor URLs designated by Sprint.

#### Section 10.08 Survivability

The terms and conditions of this Contract regarding confidentiality, indemnification, warranties, nonappropriations, payment, dispute resolution and all others that by their sense and context are intended to survive the expiration of the Contract will survive.

#### Section 11 Definitions

- (a) "Affiliate" is a legal entity that directly or indirectly controls, is controlled by, or is under common control with the party. An entity is considered to control another entity if it owns, directly or indirectly, more than 50% of the total voting securities or other similar voting rights. For purpose of this Agreement, Clearwire Corporation is not included as an Affiliate of Sprint.
- (b) "Commencement Date" is the first day of the first bill cycle in which Sprint bills monthly recurring charges or usage charges.
- (c) "Confidential Information" means nonpublic information (A) about Discloser's business, (B) given to the Recipient in any tangible or intangible form for Recipient's use in connection with this Agreement, and (C) that Recipient knows or reasonably should know is confidential because of its legends and markings, the circumstances of its disclosure, or the nature of the information. Confidential Information includes but is not limited to: trade secrets; financial information; technical information including research, development, procedures, algorithms, data, designs, and know-how; business information including operations, planning, marketing plans, and products; and the pricing and terms of the Agreement including related discussions, negotiations, and proposals.
- (d) "Cooperative Purchaser" means State of Ohio governmental entities and political subdivisions, as used in Ohio Revised Code Section 9.48, including local agencies, municipal corporations, townships, counties, villages, school districts and public institutions of higher education, all of which, the County has authorized to use this Contract to obtain Sprint Products and Services.
- (e) "Customer" means the County or Cooperative Purchaser as applicable.
- (f) "Discloser" means the party disclosing Confidential Information.
- (g) "Domestic" means the 48 contiguous states of the United States and the District of Columbia, unless otherwise defined for a particular Product or Service in the applicable Product specific Terms.
- (h) "Effective Date" is the date the last party signs this Agreement.
- (i) "Network" or "Networks" means the wireless and wireline transmission facilities owned and operated by Sprint or on Sprint's behalf by third parties under management agreements with Sprint.
- (j) "Order" or "Purchase Order" means a written or electronic order, or purchase order, submitted or confirmed by Customer and accepted by Sprint, which identifies specific Products and Services, and the quantity ordered. Verbal Orders are deemed confirmed upon Customer's written acknowledgement, or use, of Products or Services.
- (k) "Order Term" means the term designated for an individual Order.
- (l) "Preferred Pay Program" provides a discount to Sprint customers for remitting payment using cash, check or electronic funds transfer. Customer must contact its assigned Sprint representative for further information, including eligibility requirements.
- (m) "Product(s)" includes equipment, hardware, software, cabling or other materials sold or leased to Customer by or through Sprint as a separate item from, or bundled with, a Service.

- (n) **"Product-specific Terms"** means to separate descriptions, terms and conditions for certain non-regulated Products and Services. Product-specific Terms are incorporated into this Agreement as the Effective Date. Product-specific Terms are not otherwise subject to change during the Term.
- (o) **"Rates and Conditions Website"** means the website found at <http://www.sprint.com/ratesandconditions/>.
- (p) **"Recipient"** means the party receiving Confidential Information.
- (q) **"Service(s)"** means wireline and wireless business communications services, including basic or telecommunications services, information or other enhanced services, and non-regulated professional services provided to Customer by or through Sprint under this Agreement, excluding Products.
- (r) **"Sprint Wireless Recycling Program"** - provides two options for recycling used wireless devices, including accessories: (1) the Sprint buyback program provides Sprint customers with an account credit for returning to Sprint certain previously sold Sprint or Nextel wireless devices, and (2) the Sprint project connect program accepts any wireless device and uses the net proceeds that result from those devices to fund community-based initiatives such as Sprint's 4NetSafety Program. The 4NetSafety Program promotes Internet safety for children. For more information on the Sprint Wireless Recycling Program, including wireless devices eligible for the Sprint buyback program, go to [Sprint.com/recycle](http://Sprint.com/recycle).

The parties hereto have set their hands and seal this July 24, 2012.

FRANKLIN COUNTY BOARD OF COMMISSIONERS:

SPRINT SOLUTIONS, INC.:

By: Paula Brooks  
Paula Brooks, President

By: Michaela Clairmonte 7/9/2012  
Michaela Clairmonte, Manager - CN&M

By: Marilyn Brown  
Marilyn Brown, Commissioner

By: John O'Grady  
John O'Grady, Commissioner

Approved by  
Public Sector Legal  
as to legal form  
MRB 7.5.12

APPROVED AS TO FORM:

Ron O'Brien  
Prosecuting Attorney  
Franklin County, Ohio

APPROVED AS TO FORM:

Karl H. Kuespert, C.P.M.  
Director, Purchasing Department  
Franklin County, Ohio

By: Ron O'Brien 7-10-12  
Assistant Prosecuting Attorney

By: Karl H. Kuespert

Date: \_\_\_\_\_

Date: 7/13/12

