

CONTRACT
by and between
Cuyahoga County, Ohio
and
Sprint Solutions, Inc.

THIS AGREEMENT (the "Contract") is made and entered into this _____ day of _____, 2011 by and between Cuyahoga County, Ohio ("the County"), on behalf of the Information Services Center and Sprint Solutions, Inc., a Delaware corporation with principal offices at 12502 Sunrise Valley Drive, Mailstop: VARESA0208, Reston, Virginia 20196 ("Sprint").

WHEREAS, Sprint has wireless voice and data communication services available under its Master Service Agreement with the State of Ohio Office of Information Technology (TRC) with an effective date of February 3, 2006 ("State Master Service Agreement"); and

WHEREAS, Cuyahoga County desires to avail itself of services for BOE and Business Continuity "Push to Talk" Cell Phone Services of Sprint and Sprint is willing to provide such services to the County all upon the terms and conditions set forth in the State Master Service Agreement, as further supplemented herein;

WHEREAS, the County has entered into a Cooperative Purchasing Agreement with the Ohio Department of Administrative Services on behalf of BOE.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sprint and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

- 1.1 Scope of Agreement. Except as modified herein, the County agrees to be bound by the terms and conditions contained in the State Master Service Agreement. Pursuant to the terms and conditions of this Agreement, during the term of this Contract, Sprint shall provide the County with wireless communications services as outlined in Schedule A – Cuyahoga County Board of Election and Business Continuity Plan "Push to Talk" Cell Phone Price Quote and Schedule B – Sprint Government Wireless Services Agreement (Sprint Reference #BSG1104-0502). If in the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.
- 1.2 Term. The initial term of this Contract shall commence as of July 1, 2011 and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for a period of 30 months from the commencement date (7/1/11 through 12/31/2013) at a cost not to exceed Sixty Nine Thousand Three Hundred Dollars and Zero Cents. (\$69,300.00).
- 1.3 Regardless of whether the State Master Service Agreement expires during the Term, the parties agree to honor the terms and conditions of the State Master Service Agreement throughout the Term of this Contract; provided, however, that in the event the State Master Service Agreement expires without further renewal during the Term of this Contract and Sprint enters into a new State Master Service Agreement ("New State Master Agreement") to replace the State Master Service Agreement, then at Sprint's option, Sprint may require upon not less than thirty (30) days prior written notice ("New Contract Notice") that the New State Master Agreement be substituted for the State Master Service Agreement for the remainder of the Term of this Contract and the terms and conditions of the New State Master Agreement shall supersede and replace the terms of the State Master Service Agreement as of the effective date of such substitution. Upon the termination of the Master Service Agreement, if the State of Ohio Office of Information Technology does not enter into a New State Master Agreement with Sprint, then Sprint will offer the County the pricing described in this Agreement under an alternative contract ("Alternative Contract"). The Alternative Contract options may include contract vehicles such as a cooperative purchasing agreement or a separate services contract signed directly with Sprint.

ARTICLE II - SCOPE OF WORK

2.1 Rendering of Services. Sprint hereby agrees to render the services identified in Article 1.1 and any Statement of Work, at a total price during the initial Term which shall in no event exceed the amount of, excluding any applicable charges for voice mail, caller identification, call forwarding, 411, cellular overages, dispatch overages, Universal Service Fee, or other miscellaneous charges ("Miscellaneous Charges"), or services not priced in this Agreement. County agrees to pay all Charges invoiced by Sprint. County acknowledges and agrees that the Miscellaneous Charges are subject to change by Sprint without notice.

ARTICLE III - PAYMENT AND INVOICING

3.1 Payment. During the term of this Contract, the County shall pay Sprint for the services rendered to Cuyahoga County at the rate(s) set by the State Master Service Agreement and outlined in detail in the Sprint pricing attachment attached hereto as Schedule B.

3.2 Invoicing. Sprint shall invoice the County for services rendered hereunder on a monthly basis following the rendition of such services. Said invoice shall describe, on a line item, the services rendered, the date rendered, and the amount of time expended on the rendition of the services in units of time and such other information as may be reasonably requested by the County in writing to the addressee identified in Section 8.1. Sprint shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center
1255 Euclid Avenue, 4th Floor
Cleveland, OH 44115
Attn: Sabine Respress

3.3 Record Audit Retention. Sprint agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the Term of this Contract and for a period of one (1) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should Sprint be notified that an audit has been commenced pursuant to Ohio Revised Code §117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

ARTICLE IV - INDEMNITIES AND WARRANTIES

4.1 Indemnities and Warranties. All provisions relating to indemnities and warranties contained in the State Master Service Agreement contract shall inure to the benefit of Cuyahoga County. Further, Sprint shall agree to indemnify and save the County of Cuyahoga, Ohio harmless from third party claims brought against the County, for or on account of any injuries (including death) to persons or damages to real or tangible property to the extent caused by the negligence or willful misconduct of Sprint, its' servants or agents that arises out of the performance of the service rendered by Sprint under the Contract.

4.2 Condition Precedent to Indemnification. The indemnities in Article IV are conditioned upon the County providing Sprint prompt written notice of the claim, allegation or action for which indemnification is sought, together with full information and reasonable cooperation and full opportunity to control the response thereto and the defense thereof.

4.3 Exclusive Remedy. The provisions of this "Indemnities and Warranties" 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.

ARTICLE V - CHANGE ORDERS AND APPROVAL PROCESS

5.1 Change Order. Any change order or amendment requiring, or necessitating, an increase beyond the not to exceed price limit listed in section 2.1 of this contract, shall require the approval of the Cuyahoga County Executive. If

Sprint chooses to provide services in excess of the price limit, Sprint shall provide such services at its risk.

ARTICLE VI - DISPUTE RESOLUTION AND TERMINATION ARTICLE VII - DISPUTE RESOLUTION AND TERMINATION

6.1 Dispute Resolution.

- a) In the event of any dispute or disagreement between Sprint and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Sprint or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.
- (b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

6.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than thirty (30) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. Sprint, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

6.3 Termination for Convenience. The County may terminate this Contract by providing 30 days' written notice to Sprint. If the County exercises its right to terminate for convenience, the County must pay Sprint all fees and charges for Products and Services received up to the effective date of termination.

ARTICLE VII – MISCELLANEOUS

7.1 Schedules Incorporated by Reference. The following Schedules are attached hereto and are incorporated herein:

- Schedule A – Price Quote – "Push to Talk" Cell Phones BOE and Business Continuity Plan
- Schedule B – Sprint Government Wireless Services Agreement (Sprint Reference No. BSG1104-0502) including all relevant attachments

7.2 **Relationship of Parties.** Sprint is performing pursuant to this Contract only as an independent contractor. Sprint has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Contract, except as otherwise agreed upon by the parties. Nothing set forth in this Contract shall be construed to create the relationship of principal and agent between Sprint and the County. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

7.3 **Force Majeure.** Neither party will be liable to the other party hereunder or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, acts of the government, the other party hereto, or third parties (excluding subcontractors or agents), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

7.4 **Notices.** Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:
 Jeff Mowry
 Cuyahoga County Information Services Center
 1255 Euclid Avenue, 4th Floor
 Cleveland, OH 44115

In the case of Sprint:
 Sprint Solutions, Inc.
 Annette Bisbee
 12502 Sunrise Valley Drive
 Mailstop: VARESA0208
 Reston, VA 20196

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

7.5 **Severability.** If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

7.6 **Waiver.** No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

7.7 **Survival of Terms.** Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

7.8 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

7.9 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness. Venue in any action brought under this Contract shall be in Cuyahoga County.

7.10 Social Security Act. Sprint shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by Sprint for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Sprint also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

7.11 Assignment. Sprint shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County by resolution, 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 assts upon written notice to the County.

7.12 Contract Processing. Sprint shall submit one (1) original contractual agreement with original signatures to the following:

Cuyahoga County Information Services Center
 1255 Euclid Avenue, 4th Floor
 Cleveland, OH 44115

7.13 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this Contract must be executed by the County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by Sprint prior to the execution of this Contract by the County Executive, the same will be provided at Sprint's risk, and payment therefore can not, and will not, be made unless and until this Contract is approved by the County Executive. Upon approval by the County Executive of this Contract, however, any and all prior performance under this Contract shall be deemed ratified and said performance shall be deemed to be included in this Contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

7.14 Priority of Provisions. To the extent the State Master Service Agreement is not modified herein, it is incorporated herein as if fully rewritten. If a conflict exists among provisions within the documents that form the Contract, the following order of precedence will apply: (a) this Contract; (b) the State Master Agreement; (c) Schedule A; (d) Schedule B; and (e) posted or referenced terms.

ARTICLE VIII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

8.1 Electronic Signature. By entering into this Contract, Sprint, its officers, employees, agents or assigns, agree to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

8.2 Compliance with ORC. Sprint further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County

IN WITNESS WHEREOF, the County and Sprint have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written above.

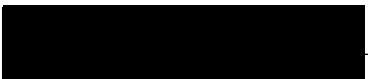
Sprint Solutions, Inc.

BY: 

NAME: Michaela Clairmonte

TITLE: Manager, CN&M

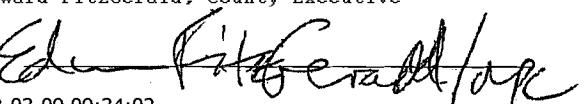
DATE: August 2, 2011



Board of Elections

Cuyahoga County, Ohio

Edward Fitzgerald, County Executive

BY: 

2012-03-09 09:34:03

NAME: Edward Fitzgerald, Chief Executive

Sprint—Approved as to Legal Form
MRB – 1 Aug 2011

