

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. **20020409**

1. REQUESTED MOTION:

ACTION REQUESTED: Approve Modification Agreement (Change Order) to the Services and Use Agreement, Contract No. 757 with Sprint-Florida Inc. , for the addition of two sites to the County network for a total cost of \$978.93 per month or \$57,756.87 over the remaining 59 months of the contract. Also approve and Addendum to the Services and Use Agreement, Schedule A, Additional Terms of Agreement, Contract No. 757 with Sprint-Florida Inc. to allow for language changes to the original Agreement.

WHY ACTION IS NECESSARY: Pursuant to the Lee County Contract Manual, approved by the Board on September 25, 2001, Agreement modifications in excess of \$50,000 requires Board approval.

WHAT ACTION ACCOMPLISHES: Allows for the continuation of data network connectivity services for two sites: Solid Waste, 105550 Buckingham Road and Gulf Environmental (GES), 19910 S Tamiami Trail. Approving this Change Order will enable staff at these sites to use the County's data network in the performance of their work duties.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #:**

C6C

3. MEETING DATE:

05-07-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE **AC-4-4**
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT _____
- C. DIVISION **ITG**
- BY: **Bill O'Kelley, Director**

7. BACKGROUND:

On September 4, 2001, the Board approved a bid waiver and entered into a Services & Use Agreement with Sprint for an additional 30 months for data circuits at a cost of \$26,909 per month for 60 months. Sprint is the sole source provider for the Lee County area.

This Modification Agreement (Change Order) is for the addition of 2 sites: Solid Waste and Gulf Environmental Services at the cost of \$978.93 per month or \$57,756.87 over the remaining 59 months of the contract. Sprint has also requested changes to articles in the original Agreement. The changes have been approved by the County Attorney's office. We therefore recommend approval of the Addendum to the Services and Use Agreement, Schedule A, Additional Terms of Agreement, Contract No. 757 with Sprint-Florida Inc. to allow for language changes to the original Agreement.

- Attachments: 1. Two (2) Modifications Agreements for execution
2. Two (2) Addendums (language changes) for execution

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>[Signature]</i>	<i>[Signature]</i>	N/A		<i>[Signature]</i>	<i>[Signature]</i> 4/25/02	<i>[Signature]</i> 4/25/02	<i>[Signature]</i> 4/25	<i>[Signature]</i> 4/25/02	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

REC'D.
by CO. ATTY.
4/22/02
100 PM
CO. ATTY.
FORWARDED TO:
[Signature]

REC'D.
CO. ATTY.
4/22/02
3:15 PM
COUNTY ADMIN.
FORWARDED TO:
4/22/02 4:00

MODIFICATION AGREEMENT



MODIFYING ORIGINAL AGREEMENT DATED: September 4, 2001

CUSTOMER:	<u>Lee County Government</u>	DATE:	<u>10/22/01</u>
ADDRESS:	<u>1700 Monroe Street</u>	PHONE:	<u>941-337-2687</u>
	<u>Fort Myers, FL 33901</u>		

CHANGE REQUEST DATE: 10/22/01 JOB #: 26784 CHANGE #: 1

PLEASE MAKE THE FOLLOWING ADDITIONS/MODIFICATIONS TO MY SYSTEM:

Add 2 additional sites at the addresses listed below:

- 1) **Solid Waste – 105550 Buckingham Road, Fort Myers, FL**
- 2) **Gulf Environmental – 19910 South Tamiami Trail, Fort Myers, FL**

Type of Service	Previous Totals	Total for additional sites	New Total Recurring
Circuits	\$ 16,621.36	\$ 593.05	\$ 17,214.41
Monitoring	\$ 2,540.00	\$ 140.00	\$ 2,680.00
Equipment	\$ 5,142.00	\$ 162.00	\$ 5,304.00
Maintenance	\$ 2,112.00	\$ 66.00	\$ 2,178.00
Administration	\$ 493.96	\$ 17.88	\$ 511.84
Total of columns	\$ 26,909.32	\$ 978.93	\$ 27,888.25

We have already received the original executed copies of the financing agreement and any other required documents as they pertain to this transaction.

If you transmit this document to us by fax, the fax version of this, as received by us, shall constitute Modification and shall be binding on you as if it were manually signed. We may treat and rely upon any fax version of this as the signed original. Your financing of the equipment in the modification agreement is also subject to all of the terms and conditions contained in the original financing contract reference above.

ACCEPTANCE

X _____
AUTHORIZED BY

TITLE

Addendum

Contemporaneously with entering into Sales and Use Agreement No. _____
_____ between Sprint-Florida, Inc. ("Sprint") and Lee County Board of County Commissioners
("Customer"), Sprint and Customer hereby agree to the following changes to the Agreement:

1. Section 20. REMEDIES. Notwithstanding anything to the contrary contained in Section 20, upon the occurrence of an Event of Default by the County, Sprint may recover from Customer all Equipment Payments and, if applicable, all Service Payments and other amounts to become due by acceleration or otherwise only to the extent permitted by applicable law and only from legally available funds.
2. Section 24. CUSTOMER'S REPRESENTATIONS AND WARRANTIES. The title and text of Section 24 is delete and the following substituted in lieu thereof:

"SPECIAL REPRESENTATIONS AND WARRANTIES OF CUSTOMER. Customer represents and warrants to Sprint that as of the date of, and throughout the Term of, the Agreement as follows: (a) Customer is a State or a political subdivision of the State of Florida. Customer is duly organized and existing under the Constitution and laws of such Sate, and is duly authorized to enter into and to carry out its obligations under the Agreement, and any other documents required to be delivered in connection with the Agreement (collectively, "Documents"). (b) The Documents have been authorized, executed and delivered by Customer in accordance with all applicable laws, rules, ordinances and regulations including, without limitation, those governing open meetings, public bidding and appropriations required in connection with the Agreement. The person(s) signing the Documents on Customer's behalf have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine. The Documents are valid, legal, binding agreements, enforceable in accordance with their terms. (c) The use of the Equipment is essential to the proper, efficient and economic functioning of Customer. The Equipment will be used during the Term of the Agreement only by Customer and only to perform such function. (d) No provision of the Agreement constitutes a pledge of the tax or general revenues of Customer, and any provision which is construed to be illegal by a court of competent jurisdiction is severance from the other provisions and is deemed to be void from the inception of the Agreement. (e) All payments due under the Agreement for the current fiscal period of Customer are within the fiscal budget for such year, are included within an unrestricted and unencumbered appropriation currently available for the lease of the Equipment and are not in contravention of any applicable limitation of indebtedness.

Customer will take all necessary action to include in its annual budget any funds required to fulfill its obligations for each fiscal year of Customer during the Term of the Agreement. (f) The financial statements, certificates or summaries relating to Customer's financial condition, fiscal budget or the assessment and collection of taxes delivered by Customer to Sprint fairly present the activity and position of Customer as of the stated date(s) and period(s). Since the date of the most recently delivered certificate or summary, there has been no material change in the budget of, and no material adverse change in the financial condition of Customer. (g) No event which would be defined as a nonappropriation herein has occurred nor is it presently known that any such event will occur under any lease or contract by which Customer is bound.

3. The following two new additional Sections are added to the Agreement:

"NONAPPROPRIATION. Customer's obligations to pay Monthly Payments and any other amounts due for each fiscal period are contingent upon approval of the appropriation of funds by its governing body. A "nonappropriation" is defined as an occurrence in which, notwithstanding Customer's best efforts and exhaustion of all available administrative appeals, Customer is not allotted line item funds for the payment of Monthly Payments hereunder for a fiscal period and Customer has no other funds from non-ad valorem sources legally available to be allocated to the

payment of its obligations under this Agreement. Sprint acknowledges that Monthly Payments are payable from sources other than ad valorem taxes. Customer may terminate this Agreement effective as of the first day of a fiscal period ("Termination") if (a) a nonappropriation has occurred and (b) Sprint has received written notice from Customer at least thirty (30) days before the Termination Date. At Sprint's request, Customer shall promptly provide supplemental documentation as to such nonappropriation. Upon the occurrence of such nonappropriation, Customer shall not be obligated for payment of any Monthly Payment for any fiscal period for which funds have not been so appropriated, and Customer shall deliver the Equipment to Sprint in accordance with Section 21 of the Agreement. If Customer terminates this Agreement pursuant to this Section, unless the following would affect the validity of this Agreement, for the remaining original term of the rental, Customer will not purchase, lease, rent, seek appropriation for, or otherwise obtain a system serving the same function as the Equipment, and such obligation will survive termination of this Agreement.

LIMITATIONS. The parties intend that the exercise of any remedy, the enforceability of any indemnity, and any requirements of Customer relative to nonappropriation set forth in the Agreement are subject to any limitations imposed by applicable law.

CUSTOMER: Lee County Board of County Commissioners

By: _____

Title: _____

Date: _____

SPRINT-Florida Inc.

By: *Patricia J. Bell*

Title: *General Manager*

Date: *3-15-02*

Sylvia Diane Miller
SYLVIA DIANE MILLER
Notary Public, State of FL
My Comm. Expires Dec. 18, 2002
Comm. No. CC 796714
3-15-02