

## AGREEMENT

### AN AGREEMENT GRANTING SPRINT COMMUNICATIONS COMPANY L.P. A LIMITED LICENSE TO CONSTRUCT, USE AND MAINTAIN TELECOMMUNICATIONS CABLES AND LINES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF LAWRENCE, KANSAS

*Whereas*, pursuant to the laws of the State of Kansas and the laws of the City of Lawrence, Kansas, the authority to use the public rights-of-way within the City of Lawrence, Kansas, is subject to the reasonable police powers of the City of Lawrence; and

*Whereas*, Sprint Communications Company L.P. is desirous of placing and installing fiber optic lines in certain limited portions of the City's public rights-of-way for the sole and limited purpose of providing a portion of a long-distance fiber optic network from an existing Sprint facility near N. 3<sup>rd</sup> Street and Locust in North Lawrence to the Kansas River Bridge for revenue generating purposes.

NOW THEREFORE THE CITY OF LAWRENCE, KANSAS, A CITY OF THE FIRST CLASS AND A MUNICIPAL CORPORATION UNDER THE LAWS OF THE STATE OF KANSAS AND SPRINT COMMUNICATIONS COMPANY L.P., A DELAWARE LIMITED PARTNERSHIP, DO HEREBY AGREE AS FOLLOWS:

Section 1. Adoption of Recitals. The above recitals are incorporated by reference as if fully set forth herein.

Section 2. Definitions. For purposes of this Agreement, the following words and phrases shall have the meanings given herein:

- a) "City" shall mean the City of Lawrence, Kansas;
- b) "Company" shall mean Sprint Communications Company L.P.
- c) "Facilities" shall mean fiber optic lines and appurtenances and improvements thereto, either under or above ground.
- d) "Public improvement" shall mean any existing or contemplated public facility, building or capital improvement project, including, without limitations, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement and public projects.
- e) "Public project" shall mean any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance or repair of public facilities or public improvements, or any other purpose of a public nature.
- f) "Public right-of-way" shall mean present and future streets, alleys, avenues and bridges and public right-of-way and public right-of-way dedicated in plats to the City. It shall include the area on, below or above the present and future streets, alleys, avenues and bridges. The term does not include public utility easements or private easements in platted subdivision or tracts.

- g) "Local exchange service" means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- h) "Telecommunications local exchange service provider" means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.
- i) "Telecommunications services" means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Section 3. Grant of Limited License. a) For and in recognition of the mutual consideration set forth in this Agreement, the satisfaction of which is hereby acknowledged, the Company is hereby granted a limited nonexclusive license to construct, place, replace, repair, maintain, extend and operate its facilities along, across, upon, under or in the City's public right-of-way, for the purpose of providing a long-distance fiber optic network provided that the license shall be limited to the location and route set forth in Exhibit A.

The City may, in writing, approve amendments to the route and location of the fiber optic facilities.

- b) This Agreement does not provide the Company the authority or right to provide "Cable Service" or "Local Exchange Service" to the City and inhabitants thereof. For purposes of this Agreement, "Cable Service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- c) This Agreement is not a franchise agreement pursuant to K.S.A. 12-2001 *et seq.* The Company acknowledges its obligation to enter into a contract franchise ordinance with the City prior to the use of City right of way for the provision of "cable service" or "Local Exchange Service" to the City and inhabitants thereof or as a "competitive infrastructure provider."
- d) The grant of this Agreement by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of way for the purposes and for the period stated in this Agreement. This Agreement does not: (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party; (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or (3) Excuse Company from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

- e) Company shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Agreement, and Company shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Agreement does not provide Company the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Company agrees that this agreement does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- f) Nothing herein contained shall be construed as giving Company any exclusive privileges, nor shall it affect any prior or existing rights of Company to maintain a telecommunications system within the City.

Section 4. Use of Right-of-Way. In the use of the right-of-way under this Agreement, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and is subject to all applicable laws, statute, ordinances orders, rules and regulations adopted by the governmental bodies now or hereafter having jurisdiction subject to Company's right to challenge in good faith such laws, statutes and/or ordinances. As a condition of this Agreement, Company is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to Company's right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. In addition, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, beautification, tree care, and other requirements on the use of the right-of-way and shall comply with the following:

- a) The Company's use of the right-of-way shall always be subject and subordinate to the City's use of the right-of-way for any public purposes. The Company shall coordinate the placement of its facilities in a manner that minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.
- b) All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind injured, damaged or removed by the Company in its activities under this Agreement shall be fully repaired or replaced within a reasonable time by the Company at its sole expense and to the reasonable satisfaction of the City and the Company.

The Company shall keep and maintain accurate records and as-built drawings depicting the accurate location of all facilities constructed, reconstructed, or relocated in the right-of-way after the date hereof and provide the above information to the City upon request. Such facilities shall be located horizontally from the street centerline and vertically by depth at least every 100 feet and at any other alignment change. Where such information is available electronically, upon request from the City, Company agrees to provide such

information in an electronic format.

City agrees to use information obtained pursuant to this subsection only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Company and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Company and agree that pursuant to the Kansas Open Records Act, K.S.A. 45-215 et seq., as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that the City is required by law to disclose such information, the City shall provide the Company advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Company to safeguard such information. In the event such information is required by force of law to be publicly disclosed, the Company shall have no further obligation under this section to provide the City with such information.

- c) Except in cases of an emergency, a minimum of fourteen (14) days prior to construction, reconstruction or relocation of any facilities in the right-of-way, the Company shall submit to the City Engineer, or her or his designee, for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Company's proposed installation of facilities in the right of way described in Exhibit A is approved as of the date of execution of this Agreement.
- d) The Company shall cooperate promptly and fully with the City and take all measures necessary to provide accurate and complete information regarding the nature and locations, both horizontal and vertical, of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Company, without expense to the City, its employees, agents, or authorized contractors. The Company shall designate an agent to provide the City with timely information when required by this subsection.
- e) As reasonably necessary, the Company shall relocate or adjust any facilities located in the right-of-way for a public project within a reasonable time of receipt of written notice from City describing the conflict and the public project. Such relocation or adjustment shall be performed by the Company at its sole expense, without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City not inconsistent with this Agreement pertaining to such.
- g) It shall be the sole responsibility of the Company to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage. If the Company fails to accurately or timely locate facilities when requested, the Company has no claim for costs or damages against the City and its authorized contractors or any other party authorized to be in the right-of-way, except to the extent such harm or damage is caused by such party's negligent or intentional conduct. City and its authorized contractors agree to take reasonable precautionary measures, including, but not limited to, calling for utility locations and observing marker posts, when working near Company facilities.
- h) Except in the event of an emergency, the Company shall notify the City not less than ten

(10) days in advance of any construction, reconstruction, repair or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the grant or denial of such authority, which shall not be unreasonably delayed. Except in the event of an emergency, no such closure shall take place without such notice and prior authorization from the City.

In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work within the right-of-way, the Company shall erect and maintain signs and other devices as required by City ordinances, regulations and rules.

- l) All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state and City law and regulations.
- j) This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.
- k) Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Agreement, Company shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

Section 5. Street Tree Ordinance. The Company shall comply with the provisions of the Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas) and amendments thereto, in the care, pruning, trimming, and removing of trees located in or on the City right-of-way.

Section 6. Location of Underground Equipment and Facilities. The Company equipment shall be placed underground as required by City ordinances, including Chapter 5, Article 19 of the Code of the City of Lawrence, and amendments thereto. Where underground construction is made, the equipment and any necessary trenching shall be installed and maintained or provided by the Company in accordance with the ordinances of the City without expense to the City.

Section 7. Compensation. The Company agrees to pay and the City agrees to accept a one-time five thousand dollar (\$5,000.00) fee for the use and occupancy of the public right-of-way. The parties agree that such fee is pursuant to K.S.A. 17-1902(n). The fee shall be due at the date of execution of the Agreement with the City.

Section 8. Indemnification and Hold-Harmless.

It shall be the responsibility of the Company to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Company fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, it has no claim for costs or damages against the City and its authorized contractors, except to the extent such harm or damage is caused by such party's gross negligence or intentional conduct.

The Company, its successors and assigns, shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Company, any agent, officer, director, representative, employee, affiliate or subcontractor of Company, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

Company or City shall promptly advise the other in writing of any known claim or demand against Company or the City related to or arising out of Company's activities in the Public right-of-way.

Section 9. Assignment of Agreement. Pursuant to the written permission of the City, which shall not be unreasonably withheld, the Company shall have the right to assign this agreement, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. If the Company should seek approval to assign this agreement, the Company shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This agreement shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Notwithstanding the foregoing, City consent shall not be required if Company assigns this Agreement to (i) any subsidiary, parent, party under common control; (ii) successor by merger; or (iii) a purchaser of substantially all of Company's assets.

Section 10. Notice to Parties. For the purpose of this Agreement, notice to the City will be to: City Manager, P.O. Box 708, 6 East 6th Street, Lawrence, Kansas, 66044. For the purpose of this Agreement, notice to the Company will be to: Sprint Communications Company L.P., Attn: Manager, Right of Way, 6391 Sprint Parkway, KSOPHT0101-Z2040, Overland Park, KS 66251. Notice will be effective upon delivery by first class mail to the above address until the City or the Company notifies the other, in writing, of a change in address.

Section 11 . Length of Agreement. This Agreement shall be effective for five (5) years after its execution date. The parties may amend this Agreement upon the mutual consent of both parties as evidenced in writing.

If any clause, sentence, section, or provision of K.S.A. 17-1901 *et seq.* and amendments thereto, that is material to the purpose, interpretation, application or enforcement of this Agreement shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Company may elect to terminate the entire Agreement upon ninety (90) days prior written notice. In the event of such termination, if Company is required by law to enter into an agreement or contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new agreement or contract franchise ordinance.

If it is determined during the term of the Agreement that the Company qualifies as a "Competitive Infrastructure Provider," as defined in K.S.A. 17-1902, and amendments thereto, or that the location of the fiber optic cable is located on property dedicated to the City that is not a public right-of-way then the City shall terminate the entire Agreement upon ninety (90) days prior written notice. In the event of such termination, if Company is required by law to enter into an agreement or contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new agreement or contract franchise ordinance.

Section 12. Rights and Duties of Company upon Expiration of Agreement. Upon expiration of this Agreement, whether by lapse of time, by agreement between the Company and the City, or by forfeiture thereof, the Company shall have the right to abandon in place, or, at Company's option, remove from public property all of its facilities used in its business within a reasonable time after such expiration or forfeiture, but in such event, it shall be the duty of the Company immediately upon such removal to restore the right-of-way from which said facilities are removed to as good condition as the same were before said removal was effected without cost to the City.

Section 13. Termination or Forfeiture of Agreement.

By City:

In case of failure on the part of the Company, its successors and assigns, to comply with any of the provisions of this Agreement, or if the Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this agreement and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Lawrence shall carry out the following proceedings:

- a) Before the City of Lawrence proceeds to terminate said Agreement, as in this section prescribed, it shall first serve a written notice as provided by the Notice provisions of this agreement, setting forth in detail the conditions of neglect, default or failure complained of, and the Company shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this agreement. If at the end of such ninety (90) day period the City of Lawrence deems that the conditions of such Agreement have not been complied with by the Company and that such Agreement is subject to cancellation by reason thereof, the City of Lawrence, in order to terminate such Agreement shall enact an ordinance setting out the grounds upon which said agreement is to be canceled and terminated. If within thirty (30) days after the effective date of said ordinance the Company shall not have instituted an action in the District Court of Douglas County, Kansas to determine whether or not the Company has violated the terms of this Agreement and that the Agreement is subject to cancellation by reason thereof, such agreement shall be canceled and terminated at the end of such thirty-day period.
- b) If within such thirty (30) day period the Company does institute an action, as above provided, to determine whether or not the Company has violated the terms of this Agreement and that the Agreement is subject to cancellation by reason thereof and prosecutes such action to final

judgment with due diligence, then, in that event in case the court finds that the Agreement is subject to cancellation by reason of the violation of its terms, this Agreement shall terminate thirty (30) days after such final judgment is rendered and available appeals exhausted.

Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

By Company:

Company may terminate this Agreement by notifying City of its intent to terminate not less than thirty (30) days prior to the annual anniversary date of its execution subject to Section 12.

#### Section 14. Insurance Requirement.

a. During the term of this Agreement, Company shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Company elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Company shall provide not less than the following insurance:

(1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

(2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Company's operations under this Agreement.

b. As an alternative to the requirements of subsection (a), Company may demonstrate to the satisfaction of the City that it is self-insured and as such Company has the ability to provide coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Company, or alleged to so have been caused or occurred.

c. Company shall, as a material condition of this Agreement, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Company shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage. Should the City request such a policy review, such review must be conducted by appointment, during normal business hours, at Sprint Corporate Headquarters located at 6480 Sprint Parkway, Overland Park, KS. The City shall not be permitted to make copies of any part of the policy documents.

Section 15. Reservation of Rights.

In entering into this Agreement, neither the City's nor Company's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Agreement, neither the City nor Company waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Company may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this Agreement or any present or future laws, ordinances, and/or rulings which may be the basis for the City and Company entering into this Agreement.

Section 16: Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this Agreement shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

Section 17: Force Majeure. No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fires, strikes, riots, floods, war and other disasters or events beyond Company's or the City's reasonable control.

Section 18. Effectiveness. This Agreement shall become effective and be in force and shall be a binding contract between the Company and the City of Lawrence, Kansas, their successors and assigns, from and after the execution of the Agreement as set out below.

Adopted this 10<sup>th</sup> day of June 2008.

CITY:

City of Lawrence, Kansas,  
a municipal corporation

By: David L. Corliss  
David L. Corliss, City Manager  
Date of Execution: 6-10-2008

Sprint:

Sprint Communications Company L.P.

By: Keith Thompson  
Keith Thompson, Right of Way Manager  
Date of Execution: June 6, 2008

STATE OF Kansas  
COUNTY OF Johnson

COMES NOW a Notary Public in and for the State and County last set forth above, and states upon their oath, that, Keith Thompson did execute this Agreement, and acknowledge the same to be his voluntary act, on this 6 day of June, 2008.

Cathie Anne O'Day  
Notary Public

My appointment expires: 05/08/2011

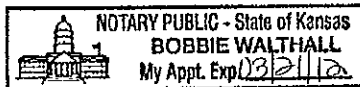


STATE OF **KANSAS**)  
COUNTY OF **DOUGLAS**)

COMES NOW a Notary Public in and for the State and County last set forth above, and states upon their oath, that, David L. Corliss, City Manager, City of Lawrence, Kansas, did execute this Agreement, and acknowledge the same to be his voluntary act, on this 10 day of June, 2008.

Bobbie Walthall  
Notary Public

My appointment expires: 03/21/12



# EXHIBIT A

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## DESCRIPTION

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Beginning at existing Sprint facilities located on Union Pacific Railroad Right-of-Way on the west side of Third Street, north of North Locust Street, and continuing:

- Southward in City of Lawrence Right-of-Way parallel to Third Street to a point near the northwest corner of the T intersection of Third Street and North Locust Street;
- then westward parallel to, and in the northern Right-of-Way of, North Locust Street to a point near the T intersection of North Locust Street and Third Street;
- then southward underneath North Locust Street and continuing southward parallel to, and in the western Right-of-Way of, Third Street to a point near the northwest corner of the T intersection of Third Street and Elm Street ;
- then continuing southward underneath Elm Street to a point located in the southern Right-of-Way of Elm Street;
- then westward parallel to, and in the southern Right-of-Way of, Elm Street, to a point located in Kansas Department of Transportation Right-of-Way.

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## MAP

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