

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR & CITY CLERK TO ENTER INTO A LICENSE AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY FOR THE INSTALLATION AND MAINTENANCE OF FIBER OPTIC LINES IN THE PUBLIC RIGHT OF WAY; AND FOR OTHER PURPOSES.

WHEREAS, Sprint Communications Company, L.P. ("Sprint") desires to maintain fiber optic lines in certain rights-of-way owned and maintained by the City of North Little Rock (the "City") for the limited purpose of facilitating communications between a cellular switch and point of presence site operated by or on behalf of Sprint; and

WHEREAS, pursuant to Ark. Code Ann. § 14-200-101, et seq., the City is authorized to impose reasonable fees and construction requirements upon telecommunication providers who extend lines in or across its rights-of-way; and

WHEREAS, Sprint previously received permission from the City to place facilities in the right of way pursuant to Resolution No. 7424, passed March 9, 2009; and

WHEREAS, it is in the best interests of its citizens and residents that the City enter into a license agreement with Sprint for the installation and maintenance of fiber optic lines in public rights-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into a License Agreement (substantially similar to Exhibit A attached hereto) with Sprint Communications Company, L.P. for the installation of fiber optic lines in the City's public rights-of-way for the limited purpose of facilitating communications between a cellular switch and point of presence site operated by or on behalf of Sprint.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:



Mayor Joe A. Smith



Diane Whitbey, City Clerk

APPROVED AS TO FORM:



Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/cf

FILED <u>11:02</u> A.M. _____ P.M.
By <u>City Atty Amy Fields</u>
DATE <u>2-19-19</u>
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas
RECEIVED BY <u>He Thomas</u>

**LICENSE AGREEMENT
FOR THE
INSTALLATION OF FIBER OPTIC LINES
IN THE
PUBLIC RIGHT OF WAY**

This License Agreement ("Agreement") is made by and between the **CITY OF NORTH LITTLE ROCK, ARKANSAS**, an Arkansas municipality of the first class (the "CITY"), and **SPRINT COMMUNICATIONS COMPANY L.P.**, a Delaware limited partnership ("SPRINT"), for the extension of fiber optic lines in public right of way owned and maintained by the CITY. The CITY and SPRINT may be referred to herein individually as "Party" and collectively, as "Parties".

RECITALS

WHEREAS, SPRINT is a Telecommunications provider as defined by the Arkansas Telecommunications Act codified at Ark. Code Ann. § 23-17-101, *et seq.*, and desires to maintain fiber optic lines ("Facilities") in certain right of way ("ROW") owned and maintained by the CITY for the limited purpose of facilitating communications between a cellular switch and point of presence ("PoP") site operated by or on behalf of, SPRINT; and

WHEREAS, the CITY owns public street and alley ROW and public utility easements within the boundaries of the City of North Little Rock; and

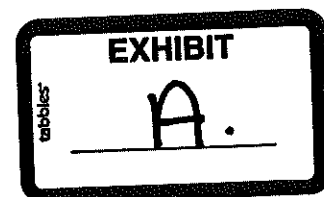
WHEREAS, SPRINT has previously received permission from the CITY to place Facilities in the ROW pursuant to Resolution 7424 dated March 9, 2009; and that certain Agreement for the Installation of Fiber Optic Lines in the Public Right of Way dated March 12, 2009 (the "Existing License Agreement");

WHEREAS, The Existing License Agreement will expire on March 12, 2019; and

WHEREAS, SPRINT has applied to the CITY for permission to continue using the ROW for the limited purpose of facilitating communications between a cellular switch and a PoP; and

WHEREAS, the CITY is authorized by Ark. Code Ann. § 14-200-101, *et seq.*, to impose reasonable fees and construction requirements upon telecommunication providers who extend lines in or across the CITY's ROW; and

WHEREAS, the Parties agree that the fees and construction requirements stated herein are reasonable.



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

SECTION 1 LICENSE.

1.1 The CITY hereby licenses SPRINT to construct, reconstruct, use, operate, maintain, inspect, upgrade, modify, replace, rebuild, remove and reinstall fiber optic lines along, over, across, and with the CITY's ROW for the purpose of facilitating communications between a cellular switch and PoP site operated by, or on behalf of, SPRINT, together with reasonable ingress and egress to and from the location of the Facilities, subject to the conditions and reservations described herein.

SECTION 2 TERM OF AGREEMENT; EFFECTIVE DATE.

2.1 Any and all of SPRINT's rights that may exist under the Existing Agreement shall be terminated as of March 12, 2019 and the Existing Agreement shall expire and terminate as of March 12, 2019 and shall be replaced and superseded by this Agreement on March 13, 2019. This Agreement shall be effective on March 13, 2019 and shall terminate five (5) years thereafter, unless sooner terminated as set forth in this Agreement.

2.2 This Agreement shall be renewed for an additional five (5) year term, upon City Council approval.

SECTION 3 FEE.

3.1 On or before June 12, 2019, SPRINT shall tender to CITY a license fee of One Dollar and Twenty Five Cents (\$1.25) per linear foot of fiber optic lines installed, for a total fee of Four Thousand Seven Hundred Twenty Eight Dollars and Seventy Five Cents (\$4,728.75). Payment shall be accompanied by a graphic depiction that accurately shows the location of the fiber optic lines as constructed.

3.2 The fee shall be adjusted annually by 2.2%, beginning on the first anniversary date of this Agreement.

3.3 The portion of fiber optic lines currently installed in CITY ROW and subject to the fee is 3,783 linear feet. SPRINT shall notify CITY of any increase or decrease to the portion of fiber optic lines installed CITY ROW and subject to the fee, and CITY shall adjust the fee accordingly.

SECTION 4 RESTRICTIONS ON AGREEMENT.

4.1 This Agreement is subject to the following conditions and reserves unto the CITY, its

successors and assigns:

.1 Any and all rights granted to SPRINT shall be subordinate to the prior and continuing right of the CITY to use the ROW exclusively or concurrently, with any other person or persons; to maintain its entire property for municipal purposes. Any and all rights granted are also subject to the right and power of the CITY to construct, maintain, repair, renew, use, operate, change, move or relocate trails and other improvements upon, along or across any or all parts of the CITY's ROW, or permit others to do so for the CITY, all or any of which may be freely done at any time or times by the CITY or others with its permission so long as such use does not materially interfere with the rights conveyed to SPRINT, without liability to SPRINT for compensation or damages excepting any liability to the extent resulting from the negligence or willful misconduct of CITY, its contractors or employees;

.2 No Facilities shall be installed, constructed, located on, or attached to any property within the CITY until SPRINT has applied for and received approval for permits for permits from the City Engineer. SPRINT shall be solely responsible for any and all acts, errors, omissions and negligence of its Contractor(s) who are involved in the installation, construction, maintenance, repair, location, relocation and any other activity involving SPRINT's Facilities subject to this Agreement;

.3 SPRINT and/or its Contractor(s) shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public ROW in a safe, neat and clean condition;

.4 SPRINT and SPRINT's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the infrastructure is being placed, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. SPRINT's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve SPRINT from compliance with these provisions;

.5 Any and all rights granted SPRINT shall also be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey,

create or vest a perpetual real property interest in land to SPRINT, including any fee or leasehold interest, easement, or any franchise rights; and

.6 The foregoing grants are non-exclusive and CITY reserves the right to agree to other non-exclusive occupations of the Property by other persons or entities, as long as such other uses do not conflict or interfere with SPRINT's operation or use; provided, however, that any such subsequent occupancies or agreements for such occupancies shall be subordinate to the rights granted herein to SPRINT, if SPRINT has not relocated therefrom.

Section 5 CONSTRUCTION.

5.1 The foregoing Agreement is made subject to minimum compliance with the construction standards and coordination requirements stated in this paragraph. To the extent any industry standard or practice contravenes any construction standard found in this paragraph, the more restrictive standard shall prevail.

5.2 Depth. The forgoing Agreement is made subject to any new construction or relocation of fiber optic lines, in whole or in part, being placed at the minimum depth from ground level elevation as detailed below. Any industry standards or practices notwithstanding, the depth requirements set forth are minimums that are not subject to any substantial compliance, waiver, or other practice that would permit less than the minimum depth to be maintained.

- .1 Minimum depth in soil: forty-two (42) inches.
- .2 Minimum depth at ditch crossings: sixty (60) inches.
- .3 Minimum depth in solid rock: eighteen (18) inches.
- .4 Minimum depth at railroad crossings: sixty (60) inches.
- .5 Minimum depth at road crossings: forty-eight (48) inches.

5.3 Conduit required. The foregoing Agreement is made subject to all fiber optic lines being placed in two (2) inch HDPE conduit.

5.4 Inspection. SPRINT agrees that CITY shall have the right to inspect any new construction or relocation of fiber optic lines for depth of placement and presence and size of conduit surrounding the fiber optic lines.

5.5 Notice. SPRINT shall provide prior written notice of not less than thirty (30) days to CITY of SPRINT's intent to construct, reconstruct, rebuild, reinstall or relocate fiber optic lines in CITY. Emergency repairs to fiber optic lines are not subject this thirty (30)-day written notice requirement.

5.6 Restoration. After any construction, repair, or relocation of fiber optic lines authorized under this Agreement, SPRINT shall restore the land to the condition in which it existed prior to the construction, repair, relocation or removal, excepting ordinary wear and tear and casualty but including, without limitation, replacing of paving or other surface material and replacing of landscaping.

5.7 Above-Ground Markers. As of the date of this Agreement, SPRINT agrees to minimize the number and size of above-ground markers indicating the location of Fiber Lines, consistent with industry marking standards, in order to preserve and enhance the aesthetic appearance of the CITY.

SECTION 6 MODIFICATION, RENEWAL, and EXTENSION.

6.1 If SPRINT wishes to renew this Agreement and continue using the ROW, then at least one hundred and eighty (180) days prior to the expiration of this Agreement, SPRINT shall apply to the CITY for a new Agreement in accordance with then existing federal, state, and local laws.

6.2 CITY shall have the right to renegotiate any of the terms from the prior agreement that may be required by applicable federal, state or local law or regulations. SPRINT understands that the CITY may adopt future code amendments and/or fee schedules relating to Facilities located within the ROW, which may replace in its entirety the current fees and other costs imposed upon SPRINT under this Agreement. SPRINT acknowledges the right of the CITY to adopt and implement such lawful code amendments and/or fee schedules.

6.3 Failure by SPRINT to request the renewal of the Agreement, and to have entered into active negotiations with the City prior to the expiration of this Agreement may result in withdrawal and revocation of any existing permits issued by the CITY to SPRINT.

SECTION 7 HAZARDOUS SUBSTANCES.

7.1 SPRINT'S and its Contractor(s)' activities upon or about the ROW shall be subject federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material, and their reporting requirements (collectively "Toxic Substances").

7.2 SPRINT understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. SPRINT acknowledges the possibility that the ROW may contain actual or presumed asbestos and other toxic substances containing materials.

7.3 Within twenty-four (24) hours after any detection by SPRINT and/or its Contractor(s) of this Agreement pertaining to Toxic Substances, SPRINT shall give the CITY Engineer notice by reporting such violation by phone at (501) 371-8333 or by email at cwilbourn@nhr.ar.gov.

SECTION 8 INSURANCE.

8.1 Without limiting any obligations or liabilities of SPRINT under this Agreement, SPRINT shall procure and maintain for the term of this Agreement, at its own expense, without direct reimbursement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement, which insurance shall meet or exceed the following unless otherwise approved by the CITY:

8.2 Commercial General Liability Insurance, including Contractual Liability Coverage, covering liability assumed under this Agreement, Products/Completed Operations Coverage, and Personal Injury Coverage, all in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.

8.3 SPRINT shall provide CITY with Certificates of Insurance evidencing coverage currently in effect upon the effective date of and for the duration of this Agreement. All policies are to provide CITY with thirty (30) days prior written notice of cancellation, ten (10) days for non-payment of premium.

8.4 SPRINT shall be fully responsible for any self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

SECTION 9 PERFORMANCE BOND.

9.1 SPRINT's Facilities were installed in the ROW pursuant to Resolution 7424 dated March 9, 2009 and the Existing Agreement dated March 12, 2009. The CITY inspected and approved SPRINT's Facilities at the time of installation. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property. The performance bond shall be in favor of CITY in the sum of Fifty Thousand and No/100 DOLLARS (\$50,000.00) or the amount of the construction costs, whichever is greater, to guarantee that SPRINT shall observe, fulfill and perform each and every term of this Agreement.

SECTION 10 INDEMNIFICATION.

10.1 SPRINT acknowledges that it has liability for any and all of its Facilities installed in the public ROW and for its use of the ROW and for its exercise of its rights under this Agreement directly or through its Contractor(s), except to the extent of intentional acts on the part of the CITY. To the fullest extent permitted by law, SPRINT, shall defend, indemnify and hold harmless the CITY, or its officials, boards, commissions, agents or employees, individually and collectively, from and against any and all claims arising out of or alleged to have resulted from or materially related to the acts, errors, mistakes, omissions of SPRINT, its employees, agents, or any tier of Contractor(s) or any other person for whose acts, errors, mistakes, or omissions SPRINT may be legally liable and from any claims or amounts arising or recovered under workers compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of SPRINT, its agent, employees or representatives to fulfill SPRINT's obligations under this

Agreement, whether resolution of the above claim(s) proceeds to judgment or not. The provisions of this paragraph shall survive termination of this Agreement. This indemnification applies even if the Party seeking damages makes a claim against the CITY or brings a claim against the CITY based on vicarious liability or non-delegable duty.

10.2 The provisions of Section 10 shall not be dependent or conditioned upon the validity of this Agreement, but shall be and remain a binding right and obligation of the CITY and SPRINT, even if part or all of this Agreement is declared null and void in a legal or administrative proceeding. It is intent of SPRINT and the CITY upon the effective date of this Agreement that this Section serves as any such declaration and shall be a binding obligation of and inure to the benefit of SPRINT and the CITY and their respective successors and assigns, if any. Any failure by SPRINT shall be considered a material breach of this Agreement.

10.3 The foregoing indemnification by SPRINT is not a waiver of the CITY's tort immunity.

Section 11 LIMITATION OF LIABILITY.

11.1 The CITY and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to SPRINT or to its affiliates or customers for any interference with or disruption in the operations of SPRINT's Fiber Optic Networks or the provision of services, except to the extent of intentional misconduct on the part of the CITY, its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

11.2 SPRINT shall assume the risk of, and hereby relinquishes any claim against the CITY in connection with any final, non-appealable determination by a court of competent jurisdiction that the CITY lacked the current statutory authority under Arkansas law to issue this Agreement.

SECTION 12 TRANSFERABILITY OF AGREEMENT.

12.1 SPRINT may not assign this Agreement or any of its rights under this Agreement or delegate any of its duties under this Agreement, without the prior written consent of the CITY, which consent will not be unreasonably withheld, conditioned or delayed, provided, however, that SPRINT may assign this Agreement or any of its rights under this Agreement or delegate any of its duties under this Agreement to (i) any entity that it controls, is under common control with or is controlled by or (ii) any entity that is the survivor of a merger, consolidation or other business combination or that acquires all or substantially all of the assets of SPRINT. Any assignment or delegation in violation of this Section is null and void.

12.2 The CITY shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement in either whole or in part. The CITY shall provide notice to SPRINT of any assignment which shall state the effective date thereof.

Upon the effective date and the extent of the assignment, the CITY shall be released and discharged from all obligations and liabilities under this Agreement.

12.3 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

SECTION 13 RECORDKEEPING.

13.1 During the entire term of this Agreement, SPRINT shall keep records and provide information to CITY regarding the following:

- .1 The status of the construction, repair, location or relocation of SPRINT's Facilities.
- .2 Information relating to any Facilities on portions of the route that are not exempt from a fee imposed for occupation of the ROW.
- .3 Information relating to this Agreement and/or to City's or SPRINT's rights or obligations under this Agreement.

13.2 If necessary for the CITY to determine SPRINT's compliance with the terms of this Agreement or other applicable law, within sixty (60) days of written notice by CITY of a request for disclosure, SPRINT shall provide relevant documentation as requested by CITY, and respond to questions.

13.3 Upon request and subject to any necessary confidentiality requirements, SPRINT shall provide to CITY copies of any communications and reports submitted by SPRINT to the FCC or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters directly affecting enforcement of this Agreement.

SECTION 14 REVOCATION/TERMINATION.

14.1 This Agreement granted hereunder may be revoked and/or this Agreement terminated prior to its date of expiration by the CITY for the following reasons:

- .1 SPRINT fails to comply with the material terms and conditions of this Agreement or applicable law, including but not limited to failing to maintain any insurance or performance bond.
- .2 SPRINT fails to make payments in the amounts and at the time specified in this Agreement after the appropriate notice.
- .3 SPRINT ceases doing business in the City.
- .4 If there is filed either by SPRINT or against SPRINT in any court pursuant to any statute, either of the United States or any state, a petition in bankruptcy or insolvency, or for

reorganization, or for the appointment of a receiver or a trustee of all or substantially all of SPRINT's property, or whenever SPRINT makes a general assignment for the benefit of creditors.

.5 SPRINT fails to obtain or maintain any licenses, permits, or other governmental approvals pertaining to the ROW.

.6 A court has issued an injunction that in any way prevents or restrains SPRINT's use of any portion of the ROW and remaining in force for a period of at least thirty (30) consecutive days.

.7 SPRINT is unable to use any substantial portion of the ROW for a period of thirty (30) consecutive days due to the enactment or enforcement of any law or regulation or because of fire, flood, or other natural disaster or similar casualty.

14.2 Before terminating this Agreement under Section 14.1, the Mayor or a designee, shall give prior written notice to SPRINT of the defect in performance and give SPRINT sixty (60) days within which to cure the defect in performance. If SPRINT cures the defect timely, the CITY shall not terminate this Agreement.

14.3 The CITY need not provide a sixty (60) day cure period prior to termination if the CITY finds that the defect in performance under this Agreement is a violation of criminal law or is a part of a pattern of repeated and persistent violations where SPRINT has already had notice and an opportunity to cure the same alleged violation.

14.4 The Mayor has the authority to terminate this Agreement, subject to SPRINT's right to notice and cure where provided.

14.5 Prior to the revocation or refusal to renew this Agreement, the CITY will hold a hearing if requested by SPRINT.

14.6 This Agreement may be terminated prior to its date of expiration by SPRINT by providing the CITY with ninety (90) days written notice and only upon making arrangements satisfactory with the City Engineer, after consulting with the Chief Deputy, to remove all SPRINT's Facilities from public property and the ROW, unless after consulting with the Chief Deputy, the City Engineer agrees in writing to allow SPRINT to abandon part or all of its Facilities in place. In the event SPRINT terminates this Agreement early, SPRINT's obligation to pay Fees shall terminate as of the date SPRINT removes its Facilities from the ROW or receives approval to abandon its Facilities in place, and the CITY shall promptly return any unused Fees to SPRINT upon the termination. If the CITY agrees to allow SPRINT to abandon its Facilities in place, the ownership of such Facilities, including everything permitted by CITY to be abandoned in place, shall transfer to CITY and SPRINT shall cooperate to execute reasonable documents necessary to accomplish such transfer, within sixty (60) days of such allowance of abandonment. In lieu of

permanent abandonment, the CITY may require SPRINT, to the reasonable satisfaction of the CITY and without cost or expense to the CITY, to promptly remove the Facilities and to restore the public property and ROW to a reasonable condition under the supervision of the CITY.

14.7 Notwithstanding anything Section 10.6 above, upon termination of this Agreement, SPRINT shall remove all of its optical repeaters, Dense Wavelength and Coarse Wavelength Multiplexers, antennae, fiber optic cables, wires, and related equipment within ninety (90) days of notice of termination.

SECTION 15 ABANDONMENT OF THE FACILITIES DEFINED.

15.1 An "Abandoned Facility" will mean a Facility no longer in service or physically disconnected from a portion of the operating Facility or from any other Facility that is in use or still carries service.

SECTION 16 GRATUITIES.

16.1 The CITY may, by written notice, terminate this Agreement, in whole or in part, if the CITY determines that employment or a gratuity was offered or made by SPRINT or a representative of SPRINT to any officer or employee of the CITY for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about Agreement performance pursuant to this Agreement.

SECTION 17 CONDEMNATION.

17.1 The following shall govern any condemnation of any part or interest in the area of the ROW used and/or occupied by SPRINT and any conveyance to the CITY or another condemnor in avoidance or settlement of condemnation or a threat of condemnation:

.1 Termination for Condemnation. This Agreement shall terminate as to the portion taken on the date that is the earlier of the date title vests in the condemnor, or the date upon which the condemnor is let into possession; provided, however, that the CITY shall promptly refund any unused Fees or other consideration to SPRINT. SPRINT has the right to file a claim against the condemnor for any damages due to such taking, including a claim for relocation costs, upon termination as to the portion taken.

.2 Power to Condemn. SPRINT acknowledges that the CITY and governmental agencies with specific condemnation authority from time to time may sue to condemn the area used by SPRINT or any interest therein or rights thereto.

17.2 The CITY reserves the right of condemnation or eminent domain over the area of the ROW used and/or occupied by SPRINT. The CITY does not warrant that it will not condemn

the area (2) used and/or occupied by SPRINT during the term of this Agreement, but the CITY represents and warrants that it does not presently have intentions to condemn such area(s).

SECTION 18 NOTICE.

18.1 Wherever in this Agreement notice is required to be given by either Party to the other, that notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and properly addressed as follows, or such other address as either Party may, from time to time, give the other Party in writing:

If to the CITY:

City of North Little Rock
ATTN: Mayor Joe A. Smith
300 Main Street
North Little Rock, Arkansas 72114
jfisher@City.ar.gov

With a copy to:

Amy Beckman Fields, City Attorney
Office of City Attorney
116 Main Street
North Little Rock, Arkansas 72119
afields@City.ar.gov

If to SPRINT:

Sprint Communications Company L.P.
ATTN: Manager, Real Estate
6391 Sprint Parkway
MS: KSOPHT0101-Z2040
Overland Park, KS 66251
ROWRenewals@sprint.com

With a mandatory copy to:

Sprint Communications Company L.P.
ATTN: Legal Department
6391 Sprint Parkway
MS: KSOPHT0101-Z2020
Overland Park, KS 66251

18.2 Notices shall be deemed sufficiently given and served upon the other Party if delivered personally or by email transmission (provided with respect to email that such transmissions are received on a business day during normal business hours), the first business day after deposit if sent by private delivery systems and the fifth business day after deposit in U.S. Mail.

18.3 Either Party may from time to time designate any other address for this purpose by written notice to the other Party in the manner set forth above.

18.4 SPRINT shall notify the CITY within thirty (30) business days of any change in mailing address.

SECTION 19 TIME IS OF THE ESSENCE.

19.1 All times and deadlines and permitted extensions indicated herein form a material basis of this Agreement and may only be waived in writing signed by both Parties.

SECTION 20 NO WARRANTY.

20.1 The issuance of a license, permit or other authorization by the CITY is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation or warranty that a franchise is not required.

20.2 SPRINT ACKNOWLEDGES AND AGREES THAT CITY DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS ROW OR THE PREMISES SURROUNDING THE SAME, AND SPRINT HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY CITY ROW.

SECTION 21 COSTS OF ENFORCEMENT.

21.1 In the event of a default by SPRINT, SPRINT, its successors and assigns, agree to pay the CITY's reasonable costs of enforcing its rights under this Agreement, including all reasonable attorneys' fees and related costs which the CITY may incur with regard to collection of any amounts owed under this Agreement or with respect to the enforcement of any other rights of the CITY under this Agreement.

SECTION 22 GOVERNING LAW.

22.1 It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arkansas, both as to interpretation and performance. Any action at law, suit inequity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts located within Pulaski County, Arkansas.

SECTION 23 NON-WAIVER.

23.1 SPRINT shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of CITY upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 24 REMEDIES NOT EXCLUSIVE.

24.1 The remedies set forth in this Agreement are not exclusive. Election of one remedy does not preclude the use of other remedies.

SECTION 25 FORCE MAJEURE.

25.1 With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon SPRINT, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by SPRINT and is beyond its reasonable control.

SECTION 26 DISPUTE RESOLUTION.

26.1 In the event of a dispute between the Parties to this Agreement regarding a provision of this Agreement, a Party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the Parties will meet in good faith to attempt to resolve the dispute. If the Parties fail to resolve the dispute, then the Parties agree that the dispute may be resolved through mediation. If mediation is agreed to by the disputing Parties, the disputing Parties shall mutually agree upon the services of one mediator located in Pulaski County, Arkansas, whose reasonable fees and expenses shall be borne equally by the disputing Parties. If the dispute is not resolved within a reasonable time, the disputing Parties shall be free to pursue litigation to resolve the dispute.

SECTION 27 EXHIBITS.

27.1 Any Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

SECTION 28 MERGER.

28.1 This document represents the entire agreement between the Parties and incorporates all prior discussions and agreements. This document is *not* an agreement with any other governmental entity or waiver of any applicable federal, state, or county regulation.

SECTION 29 MODIFICATION.

29.1 No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of this Agreement shall be binding unless hereafter made in writing and signed by the Party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Agreement.

SECTION 30 SEVERABILITY.

30.1 Any provision or part of this Agreement held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and SPRINT, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

SECTION 31 COUNTERPART EXECUTION.

31.1 This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement, which may be transmitted by electronic mail in accordance with Section 18 of this Agreement. Any signature page transmitted by electronic mail will be given the same force and effect as an original signature.

SECTION 32 AUTHORITY.

32.1 The Parties executing this Agreement below represent and warrant that they have the full and complete legal authority to act on behalf of CITY and SPRINT respectively and that the provisions herein constitute valid, enforceable obligations of each.

SECTION 33 FILING.

33.1 This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either Party may additionally file this document in any other governmental office deemed appropriate; however, the Parties waive all claims and defenses in law or equity based upon such additional filing.

SECTION 34 SURVIVAL OF LIABILITY.

34.1 All obligations of SPRINT and CITY hereunder and all warranties and indemnities of SPRINT hereunder shall survive termination of this Agreement.

IN WITNESS WHEREOF, the name and seal of the CITY is hereunto affixed by its duly authorized Mayor and the authorized representative of Sprint.

CITY OF NORTH LITTLE ROCK, ARKANSAS

BY: _____
JOE A. SMITH, MAYOR

DATE: _____

SPRINT COMMUNICATIONS COMPANY L.P.

BY: _____
JAMES B. FARRIS

Title: MANAGER, REAL ESTATE

DATE: _____

Reviewed and approved by:

OFFICE OF CITY ATTORNEY

AMY BECKMAN FIELDS, City Attorney

BY: _____
Deputy City Attorney

DATE

ATTEST:

DIANE WHITBEY, CITY CLERK

