



City Recorder/HR Manager
126 E. Central Avenue
Sutherlin, OR 97479
(541) 459-2856 x 207
www.cityofsutherlin.com

City of Sutherlin

NOTICE OF ORDINANCE ENACTMENT

ORDINANCE NO.

AN ORDINANCE GRANTING TO SPRINT COMMUNICATIONS COMPANY L.P., A DELAWARE LIMITED PARTNERSHIP, A NON-EXCLUSIVE FRANCHISE TO USE THE PUBLIC RIGHTS-OF-WAY TO PROVIDE FOR THE PLACEMENT OF NON-CABLE TELECOMMUNICATIONS FACILITIES, SUBJECT TO CERTAIN CONDITIONS AND DUTIES AS SPECIFIED.

THIS ORDINANCE WILL BE CONSIDERED BY COUNCIL AT THE REGULAR COUNCIL MEETING OF

**MONDAY, JUNE 11, 2018 @ 7PM
CIVIC AUDITORIUM - 175 E. EVERETT AVENUE**

Questions or copies of this Ordinance may be viewed by interested persons at the office of City Recorder, 126 E. Central Avenue, Sutherlin, Oregon, between the hours of 9:00 a.m. and 5:00 p.m., weekdays. A copy of this Ordinance may be purchased by interested persons for a sum determined to cover the City's expense for providing the copy.

Pursuant to Section 30 (b) (c) of the Sutherlin City Charter, this notice has been posted at the following locations: Sutherlin City Hall; Sutherlin Post Office; Sutherlin Visitor's Center and the City's website (www.cityofsutherlin.com).

Posted this day, June 4, 2018
By Diane Harris
City Recorder

CITY OF SUTHERLIN, OR

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO SPRINT COMMUNICATIONS COMPANY L.P., A DELAWARE LIMITED PARTNERSHIP, A NON-EXCLUSIVE FRANCHISE TO USE THE PUBLIC RIGHTS-OF-WAY TO PROVIDE FOR THE PLACEMENT OF NON-CABLE TELECOMMUNICATIONS FACILITIES, SUBJECT TO CERTAIN CONDITIONS AND DUTIES AS SPECIFIED

WHEREAS, on July 13, 1987, the **CITY OF SUTHERLIN** (hereinafter called "City"), a municipal corporation of the State of Oregon, adopted Ordinance No. 733 granting US Sprint Communications Company, a New York general partnership, a non-exclusive franchise for placement of telecommunications fiber-optic cable in the City's public right-of-way; and

WHEREAS, **SPRINT COMMUNICATIONS COMPANY L.P.**, a Delaware limited partnership (hereinafter called "Sprint") is the successor-in-interest to US Sprint Communications Company; and

WHEREAS, Sprint has applied to the City for permission to continue to use certain streets and public right-of-way for the placement of a Fiber Optics Communication System under, in, along, over and across certain streets and public right-of-way in the City; and

WHEREAS, the City Council has the authority to grant franchises for the use of its right-of-way; and,

WHEREAS, pursuant to Ordinance No. 733, approved on July 13, 1987, the Sutherlin City Council has authorized the Mayor of the City of Sutherlin to execute a Franchise with Sprint to construct, install, operate, maintain, and upgrade the system then in place, a Fiber Optics Communication System in, along, under, over and across certain streets and public ways within the City; and

THE CITY COUNCIL OF THE CITY OF SUTHERLIN, DOUGLAS COUNTY, OREGON
DO ORDAIN AS FOLLOWS:

SECTION 1. Permission Granted.

A.1 Subject to the provisions contained herein, and to the ordinance and resolution of the City of Sutherlin, Oregon State Statutes and the Constitution of the State of Oregon, the City hereby grants to Sprint the nonexclusive revocable Franchise, right and privilege to construct, install, operate, maintain, and upgrade the system then in place, a Fiber Optics Communication System in, under, along, over and across certain streets and public ways, in the City as specifically identified on the map attached as Exhibit A with designated specific streets and public ways as the authorized routes governed by this Franchise. The permission granted is also subject to the applicable provisions of the City of Sutherlin resolutions and ordinances and any amendments thereto. The permission granted herein to Sprint shall hereinafter be referred to as the "Franchise." As used herein the term "streets and public ways" means the surface of and the space above and below any public street, sidewalk, right-of-ways, alley, right-of-way easements, or other public way of any type whatsoever. Sprint may construct, install, upgrade and operate additions to its Fiber Optics Communication System in City

right-of-way other than that shown on Exhibit A with the written consent of the City Engineer, without further approval of the Sutherlin City Council. Any such additions shall be at all times governed by the terms and conditions of this Franchise. In the event Sprint makes additions, an amended Exhibit A shall be produced by Sprint.

A.2 For purposes of this Franchise, "Fiber Optics Communication System" means an interstate network of fiber optic cables and all related property including conduit, carrier pipe, cable fibers, repeaters, power sources and other attachments and appurtenances necessary for transmitting high speed voice, data and (for such applications as teleconferencing) video signals in connection with a long distance telecommunications system or systems. The authority granted by this Franchise to use the streets and public ways does not authorize the use of the Fiber Optics Communication System or fiber optic cable for operating a cable television system, nor authorize Sprint to operate as a cable operator as those terms are defined in the Communications Act of 1934 as amended, state law, or the City Code. The authority granted by this Franchise does not authorize the use of the streets and public ways for an open video system as defined in the Communications Act of 1996 or as defined or authorized by the FCC.

A.3 If it is necessary for Sprint to comply with any law or regulation of the Federal Communications Commission or the Public Utility Commission of Oregon to engage in business activities associated with use of the streets and public ways for a Fiber Optics Communication System, Sprint shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this Franchise.

SECTION 2. General Conditions.

A.1 Sprint has represented to the City it is authorized to provide Telecommunication Service in Oregon by the Public Utility Commission of Oregon (Order No. 08-221).

A.2 There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any ordinance, resolution or statute, and Sprint by its acceptance of this Franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its lawful exercise of such rights or power, heretofore or hereafter enacted or established. Neither the granting of any Franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City; provided however, that the City shall not voluntarily impair the rights of Sprint under this Franchise.

A.3 Insurance

(i) Sprint shall indemnify and hold harmless the City and its agents and employees from and against claims, damages, losses, and expenses, including reasonable attorney's fees sustained by the City on account of suits, judgments, executions, claims or demands to the extent arising out of the performance of work by Sprint and its agents, employees and contractors pursuant to this Franchise or the installation, operation or maintenance of the Fiber Optics Communication System authorized herein.

(ii) Throughout the term of this Franchise, and as specified herein Sprint and those acting on its behalf, including but not limited to subcontractors, shall maintain in full force and effect the following insurance, issued on policies written by companies authorized to do business under the laws

of the State of Oregon with a financial rating no less than "A-" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Guide:

Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:

(1) \$2,000,000 per occurrence combined for bodily injury and property damage, \$4,000,000 annual aggregate.

CGL insurance shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury or death, property damage, products liability, and completed operations. Such insurance shall include broad form and blanket contractual coverage.

Comprehensive automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 combined single limit per accident.

(iii) Worker's compensation with statutory limits and employer's liability insurance with limits of not less than \$1,000,000 per occurrence. In the case that Sprint subcontracts with others, Sprint shall require each subcontractor to similarly provide worker's compensation insurance for all of subcontractor's employees.

(iv) The coverage amounts set forth may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

(v) The liability insurance policies required by this Section shall be maintained by Sprint and those acting on its behalf, including but not limited to subcontractors, throughout the term of the Franchise and such other period of time during which Sprint is operating without an authorization or franchise hereunder, or is engaged in the removal of its Facilities. Sprint shall provide an insurance certificate, together with an endorsement naming the City as an additional insured, to the City prior to the commencement of any work or installation of any facilities pursuant to said Franchise and again at each policy renewal or replacement. Payment of deductibles and self-insured retentions shall be the sole responsibility of Sprint. The insurance required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Sprint's insurance shall be primary insurance as respects the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of Sprint's insurance and shall not contribute to it.

(vi) Each policy shall be endorsed to provide the City with notice of cancellation or material change in accordance with policy provisions.

(vii) If Sprint desires to satisfy the insurance requirements herein through self-insurance, Sprint must provide documentation to the City demonstrating that the coverage provided meets or exceeds that described above.

(viii) No provisions of this Section A.3 shall bar Sprint from claiming contribution for such injuries, death, damages and defense costs after, and to the extent, City is found liable by a court of competent jurisdiction for such damages, injuries or death by reason of acts or omissions of City or its employees, servants or agents.

SECTION 3. Plans Approval, Permits and Construction.

A. The Fiber Optics Communication System herein provided for, to be constructed, installed, operated and maintained hereunder, shall be as located or relocated as to not interfere with traffic or other authorized uses over, under or through said streets and public ways. Those phases of construction relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Fiber Optics Communication System herein provided for, shall be subject to reasonable regulation by the Community Development Director.

B.1 If, during the design process for public improvements the City discovers a potential conflict with proposed construction by Sprint's Fiber Optics Communication System, Sprint shall either (i) locate and, if necessary, expose its facilities in conflict or (ii) use a location service under contract with the City to locate or expose its facilities. Sprint shall reimburse the City for the reasonable cost resulting from number (ii) above. Sprint agrees to furnish the location information in a timely manner, but in no case longer than twenty (20) days.

B.2 The City reserves the prior and superior right to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, re-grade, widen, realign, or maintain any street and public ways, aerial, surface, or subsurface improvement, including but not limited to water mains, traffic control conduits, cable and devices, sanitary or storm sewers, subways, tunnels, bridges, viaducts, or any other public construction or public improvement within the rights-of-way of the City limits.

B.3 When the City reasonably exercises its prior superior right to the streets and public ways for a public use, or otherwise determines it is in the public interest, Sprint shall move its property that is located in the streets and public ways, at its own cost, to such a location as the City directs by notice in writing and in the time reasonably determined by the City. Such time period shall not be less than sixty (60) days except in the case of an emergency posing a threat to the public safety or welfare. If both the City and Sprint agree, the time frame may be extended based on the requirements of the particular relocation project.

C. Sprint may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Sprint in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, Sprint shall submit additional relevant information to assist the City in making such evaluation. The City shall give each alternative proposed by Sprint full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, Sprint shall relocate its facilities as otherwise provided in this Section.

D. If, in the installation, use or maintenance of its Fiber Optics Communication System, Sprint damages or disturbs the surface or subsurface of any streets or public ways or adjoining public property or the public improvement located thereon, therein, or thereunder, Sprint shall promptly, at its own expense, and in a manner reasonably acceptable to the City restore the surface or subsurface of the streets or public ways or public property, or repair or replace the public improvement thereon, therein, or thereunder, in as good a condition as before such damage or disturbance.

E. The installation, use and maintenance of Sprint's Fiber Optics Communication System within the streets and public ways authorized herein shall be in such a manner as not to interfere with

the City's placement, construction, use and maintenance of its streets and public ways, street lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been installed, maintained, used or authorized by the City.

F. Sprint shall obtain all required permits, including Traffic Control Permits and pay all applicable permit fees to the City for all construction, installation, erection, enlargement, replacement, extension, maintenance and relocation in the streets and public ways, and the City may issue permits with such conditions as are reasonable and necessary to ensure compliance with the terms and conditions of this Franchise.

G. All installation of cable shall be installed per the permit and/or construction plans approved by the City. Sprint may install cables on existing utility poles or in existing conduit where permission is granted by owner of the utility pole or conduit, except where those same poles are scheduled to be replaced with buried facilities.

H. Any trimming of trees by Sprint in the streets and public ways shall be subject to such regulation as the Sutherlin City Council or other authorized official may establish to protect the public health, safety and convenience.

I. The provisions of this Section shall in no manner preclude or restrict the Sprint from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities.

SECTION 4. Abandonment of the Fiber-Optics Communications Cable or Termination or Revocation of Franchise.

If Sprint permanently abandons use of its cable, ducts, or other facilities under or pursuant to the Franchise, then the facilities are required to be removed from the streets and public ways to the satisfaction of the City at Sprint's cost. In lieu of removal the City may permit the improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, Sprint shall submit to the City a proposal and instruments for transferring ownership to the City. Upon revocation or termination of the privilege herein granted, Sprint shall promptly remove its Fiber Optics Communication System unless permitted by the City to be left in place. If Sprint decides to remove such Fiber Optics Communication System, or any portion thereof, then Sprint, at its sole expense, shall restore the public rights-of-way where disturbed by such removal in as good condition as is reasonably possible to the condition prior to the removal. Any such facilities which are not removed within one hundred eighty days (180) of either such date of termination or revocation or of the date the City issued a permit authorizing removal, whichever is later, automatically shall become the property of the City.

SECTION 5. Franchise Fees

A. As consideration for the granting of this Franchise, Sprint shall pay the City on July 1, 2017 and on each anniversary date thereof during the term of this License, the sum of one thousand two hundred twenty-five dollars (\$1,225) annually for a nonexclusive right to place and maintain conduit with appurtenances in the Rights-of-Way occupied by Sprint in the same alignment identified in Exhibit A within the City of Sutherlin streets and public ways. The fee shall be adjusted each year starting in 2018 during the term of the Franchise based on the change in the all-urban Consumer Price

Index (CPI). The adjustment shall be based on the current year's February CPI compared to the previous year's February CPI.

B. Payment by Sprint to the City shall be made in United States legal tender. Payments shall be considered timely if postmarked on or before the due date.

SECTION 6. Term of Franchise.

The right, privilege and term of Franchise granted herein shall continue and exist for a period of ten (10) years from the date of approval by the Sutherlin Mayor and City Council. If Sprint is not in default of any provision hereof beyond all applicable notice and cure periods, this Franchise shall be extended administratively under the same terms and conditions set forth herein for two additional terms of ten (10) years each by the City unless Sprint gives written notice of its intent to terminate this Franchise prior to its expiration as provided in Section 9 below.

In the event the parties are actively negotiating in good faith for a new Franchise or an amendment to this Franchise upon the termination date of this Franchise, the parties by written mutual agreement may extend the termination date of this Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Franchise and not as a new Franchise or amendment.

SECTION 7. Assignment.

The right, privileges, and Franchise granted hereunder shall not be assigned without the express written consent of the City by an ordinance or resolution passed by the Sutherlin City Council, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Sprint may assign this Franchise or any of its rights under this Agreement or delegate any of its duties under the this Franchise 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. If the City's consent is not required for an assignment, the assignee will notify the City of the assignment following the assignment.

SECTION 8. Nonexclusive Franchise.

This grant is not exclusive, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation, subject, however, to the rights granted to Sprint herein. Nothing agreed to in this Franchise is intended to deny or lessen the powers and privileges granted the City under the Constitution and laws of the State of Oregon.

SECTION 9. Cancellation of Franchise.

A.1 The Franchise granted hereunder may be canceled prior to its date of expiration by Sprint upon express written notice to the City. The City may revoke or cancel this Franchise for failure to comply with the provisions of this Franchise.

A.2 Before revoking or canceling the Franchise, the Sutherlin City Council or a designee, shall make a written demand that Sprint comply within sixty (60) days' notice to Sprint. If a violation

by Sprint continues for a period beyond that set forth in the written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued, the City may revoke or cancel this Franchise.

SECTION 10. Notice:

Communications relating to this Franchise will be deemed given when received, when sent by certified mail, return receipt requested, to the following addresses or as may be later designated by written notice of the other party:

Sprint: Sprint Communications Company L.P.
Attn: Manager, Real Estate
MS: KSOPHT0101-Z2040
6391 Sprint Parkway
Overland Park, KS 66251

copy to: Sprint Communications Company L.P.
Attn: Real Estate Attorney
MS: KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, KS 66251

City: City of Sutherlin
Attn: City Finance Director
126 E. Central Avenue
Sutherlin, OR 97479

SECTION 11. Governing Law.

This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to any conflict of laws provision.

SECTION 12. Severability.

Nothing in this Franchise is intended to be inconsistent with the State or Federal Law and further neither the City nor Sprint waives any rights granted under State or Federal Law by agreeing to this Franchise.

In the event that any one or more of the provisions contained herein, is, for any reason, held to be unenforceable in any respect under law or regulation, the remainder of this Franchise will not be affected thereby and will continue in full force and effect, unless removal of that provision(s) results in material change to this Franchise. In such a case, the City and Sprint will negotiate in good faith for replacement language.

SECTION 13. Proprietary Information.

Sprint stipulates that it understands that Oregon law limits the ability of the City to shield from public disclosure information given to the City by Sprint. Accordingly, the parties agree to work together to avoid disclosures of information which would result in economic loss or damage to Sprint because of anticipated mandatory disclosure requirements to third persons. To the extent Sprint has

provided documents to the City that constitute business or trade secrets and/or proprietary information, Sprint must provide said information in an envelope marked, "Proprietary Information: Do Not Disclose." The City will exercise good faith efforts to protect the confidentiality of the information provided. Sprint agrees to indemnify and hold harmless the City for any loss or liability for legal penalties relating to non-disclosure, costs or attorney's fees because of nondisclosures requested by Sprint under Oregon's open public records law. City promises to provide reasonable notice and opportunity to Sprint to defend and/or seek a protective order preventing disclosure under the open public records law. City agrees not to contest Sprint's motion to intervene in any case involving disclosure of Sprint's records, should Sprint decide to become a third party intervenor in such a case.

SECTION 14. Other Authority Superseded; Entire Agreement.

Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City under Ordinance No. 733 is superseded by this Franchise. This Franchise Agreement constitutes the entire agreement between Sprint and the City with respect to the subject matter contained and may not be amended or modified except by written document, signed by both parties.

PASSED BY THE CITY COUNCIL THIS _____ DAY OF _____, 2018.

APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2018.

CITY OF SUTHERLIN

**SPRINT COMMUNICATIONS
COMPANY L.P.**

By: _____
Todd McKnight, Mayor

By: _____
James B. Farris, Manager, Real Estate

Attest:

By: _____
Dan Wilson, City Finance Director