CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1847

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 May 10, 1988, the City Council adopted Ordinance No. 944 granting US Sprint Communications Company, a New York general partnership a non-exclusive license 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 ("Sprint") is the successor-in-interest to US Sprint Communications Company; and

WHEREAS, the license granted in Ordinance No. 944 expires June 9, 2013; and

WHEREAS, the City Council adopted Ordinance 1402 on April 10, 2001, a telecommunications ordinance now codified as Title 11 FMC, which governs the rights and responsibilities of operators of telecommunications systems and telecommunications service within the City of Fife; and

WHEREAS, on April 12, 2013, Sprint filed an application in accordance with FMC 11.02.010, requesting renewal of its license/franchise; and

WHEREAS, the City Council has the authority under Chapter 35.99 RCW and RCW 35A.47.040 and Title 11 FMC to grant franchises (also known as master permits) for the use of its right-of-way; and

WHEREAS, the City Council finds that it is consistent with the purposes and policies set forth in FMC 11.01.010 and 11.01.020 and in the public interest to grant a nonexclusive franchise to Sprint to enter, use and occupy the City of Fife public right-of-way to locate fiber optic telecommunications lines and appurtenant facilities; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

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Section 2. Limits on permission.

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Section 1. Parties, grant.

A. This is a franchise agreement ("franchise"), pursuant to Title 11 FMC, Chapter 35.99 RCW and RCW 35A.47.040, between the City of Fife as Grantor, herein "City," and Sprint Communications Company L.P., a Delaware limited partnership, herein "Franchisee."

B. In return for the promises made and subject to the stipulations and conditions stated, the City grants to Franchisee non-exclusive general permission to enter, use, and occupy the public right of way within the City Fife (the "franchise area"), to locate non-cable telecommunications facilities (specifically, fiber optic trunk lines and appurtenances). In accepting this franchise, Franchisee stipulates and agrees to the City's authority to issue and require the franchise and stipulates and agrees to the other terms and conditions hereof.

C. For purposes of this franchise the terms "right-of-way" and "public right-of-way" mean land acquired or dedicated for public roads and streets which under the applicable ordinances and laws the City has authority to grant franchises, permits or licenses for use thereof or has regulatory authority thereover but does not include (1) state highways, (2) land dedicated for roads, streets and highways not open and not improved for motor vehicle use by the public, (3) structures such as, but not limited to, poles and conduits located within the right-of-way, (4) parks and open space, and (5) publicly owned shorelines or harbor areas.

Section 2. Limits on permission.

A. Franchisee stipulates that it does not currently provide telecommunications service as that term is defined in FMC 11.01.030(Z) to customers within the City of Fife; but that its communication facilities located within the franchise area constitute a "telecommunications system" as that term is defined in FMC 11.01.030(AA). Franchisee stipulates that its communication facilities will not be connected with any public switched telephone network within the City of Fife without prior written notification of such connection to the City of Fife, indicating the date of connection, the location of the connection, and the name of the publicly switched telephone network to which Franchisee is making a connection.

This franchise shall be subject to the prior and continuing right of the City to use any and all parts of the rights-of-way, exclusively or concurrently, with any other person or persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which may affect the rights-of-way. Should the City Manager or his/her designee, with the advice of the City Attorney, determine Franchisee is using the rights-of-way to provide cable service or to provide services beyond the scope of permission extended herein to use the public right-of-way, the City reserves the right to cancel this franchise and require Franchisee to follow any applicable requirements to obtain a cable franchise or other franchise from the City, and further reserves all other rights and remedies available to the City by law.

B. The permission granted herein does not extend to areas outside those listed in Section 1. B. or activities outside those stated in Section 2. A., or otherwise to any area outside

the authority of the City to extend permission under the franchise, such as buildings or private areas not reserved for general utility access. Franchisee is solely responsible to make its own arrangements for any access needed to such places. Permission granted is non-exclusive. Franchisee stipulates that the City may grant similar permission to others. The City reserves the right itself to engage in the provision of telecommunications service at any time, as may be permitted by law.

C. This franchise is not exclusive. The City expressly reserves the right to grant rights to other entities or persons, as well as the right in its own name as a municipality, to use the rights-of-way for similar or different purposes allowed Franchisee under this franchise, by lease, franchise, permit or otherwise.

D. This franchise conveys no title, equitable or legal, in the public rights-of-way. The right granted in this franchise is only the right to occupy the public rights-of-way in accordance with the terms of this franchise. This franchise creates no vested right for any facility or system to be located or to remain at any specific location in the public right-of-way.

E. The permission extended by the City does not include any conveyance of title, legal or equitable, to City owned facilities which are available for the City's exclusive use.

Section 3. Effective date, term.

This franchise is effective at 12:01 a.m., five days after publication of the ordinance, and expires on the last day of the one hundred twentieth month (a term of 10-years) at midnight of the expiration date, subject to the conditions of Section 13 and Section 14 herein and the acceptance of this franchise by Franchisee. This does not affect the City's right to revoke the franchise for cause, abandonment, or because of breach of any promise, condition or stipulation stated herein beyond any applicable notice and cure period. The City shall promptly provide a Certificate of Publication to Franchisee.

Section 4. Franchisee's general promises.

As general promises in consideration of the grant of this franchise:

A. Franchisee promises to remain in good standing a corporation registered to do business in the State of Washington, and pay all taxes and fees applicable thereto.

B. Franchisee promises to comply with any other applicable federal and state legal requirements, together with all lawful municipal ordinances, resolutions of the City Council or directives of the City Manager, provided such requirements are not in conflict with state or federal laws.

C. In addition to its obligations specific to new construction, Franchisee stipulates that all construction, operation, maintenance and repair activity in the franchise area is subject to the City's street obstruction or use permit ordinances or other applicable city ordinances or

regulations. Franchisee promises that all construction, operation and repair of its facilities located in the franchise area shall be performed in a manner consistent with industry standards. Construction, operation, or repair of facilities located within the franchise area shall not commence until all required permits have been properly applied for and obtained from the proper city officials, and all associated permit fees have been paid. Franchisee must comply with the requirements in Chapter 12.08, FMC, for actual construction in city rights-of-way, or if the Franchisee must repair any of its equipment located in city rights-of-way.

D. Franchisee promises to coordinate its activities with other utilities and users of the franchise area scrupulously to avoid any unnecessary cutting, damage or disturbance to the public right of way and other permitted areas, and consistent with the requirements of FMC 11.01.170, to conduct its planning, installation, construction and repair operations at all times so as to maximize the life and usefulness of the paving and municipal infrastructure.

E. Franchisee promises that its uses of the franchise area, and any rights granted herein, shall at all times be subordinated to and subject to municipal infrastructure needs and uses, the general public travel and access uses and the public convenience, except as may be otherwise required by law.

F. Franchisee promises to conduct all operations in or near the franchise area so as to minimize or entirely avoid any hazard, danger or inconvenience to municipal infrastructure needs and uses, public travel, and the public convenience.

G. Franchisee represents that it is familiar with Chapter 19.122 RCW, Underground Utilities. Franchisee certifies it understands local procedures, custom and practice relating to the one-call locator service program, and will ensure that its contractors or others working in the franchise area on Franchisee's behalf are similarly well informed. Franchisee shall locate its facilities for the City at no charge.

Section 5. Plans to be submitted, publicizing work.

A. A general map showing all of Franchisee's facilities within the Franchise Area as of the date of this Ordinance are on file with the City's Public Works Department.

B. Franchisee shall submit all new or remodel construction plans and plans for any substantial rebuild, or upgrade of its facility located within the franchise area, or any other information reasonably requested by the City relative to such plans to the City Manager for review and approval, with a copy of such plans and information to the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. Franchisee promises that all its installations shall be placed in the standard location for telephone conduit or overhead lines, as determined by local regulation, custom and practice, or as designated by the City Engineer.

C. Franchisee shall provide the City with as-built drawings showing any new facilities constructed within the rights of way pursuant to this franchise. City may request as-

built drawings from Franchisee as reasonably needed to perform its duties of management of the affected rights-of-way, and Franchisee agrees to promptly comply with such additional requests.

D. Franchisee's plans for work in the franchise area may not be publicized except as the City may direct to the extent necessary to notify the public and operators of other communication systems of the impending work and in order to minimize inconvenience and disruption to the public.

Section 6. Location or relocation.

A. The City reserves the right to change, re-grade, relocate, abandon, or vacate the right-of-way, and/or any skywalk within or near the franchise area or to authorize any public works project deemed necessary for the public health, safety or welfare, located in or near the franchise area at no expense or liability to the City except as may be required by section 6, Ch. 83, Laws of 2000 of the State of Washington, and as further provided in FMC 11.01.170(F)(5) or 11.01.180. Except in cases of emergency, the City will provide notice to Franchisee at least sixty (60) days in advance of a requirement that relocation of Franchisee's facilities must occur. In cases of emergency, the City will provide notice to Franchisee as soon as practicable. Franchisee may seek an extension of the time to perform such relocation where franchisee cannot perform such relocation within the time specified even with the exercise of its best efforts, and such request for extension shall not be unreasonably refused. The City will provide to Franchisee copies of the pertinent portions of the City's plans and specifications for the public works project that requires relocation. Except as otherwise required by law, Franchisee promises to relocate, remove, or reroute its facilities, as required by the City Manager, at its sole expense and liability subject to and consistent with section 6, Ch. 83, Laws of 2000 of the State of Washington. Franchisee promises to complete the required relocation of its facilities as soon as practicable and to cooperate with the City in the coordination of construction events relating to relocation. Franchisee promises that its required relocation shall be accomplished in a manner that accommodates and does not unreasonably interfere with or unnecessarily delay the City's public works project. Franchisee promises to protect and save harmless the City, its officers, agents and employees from any customer or other third party claims for service interruption or other losses in connection with any such change, re-grade, relocation, abandonment, or vacation of the right of way or other permitted areas except to the extent caused by the negligence or willful misconduct by the City, its officers, agents and employees. The parties agree that "relocation" refers to a permanent movement of facilities required of Franchisee by the City, and not a temporary or incidental movement of facilities, including, but not limited to a raising of lines to accommodate housemoving and the like, or other revisions Franchisee would accomplish and charge to third parties without regard to municipal request.

B. Where the City determines to abandon or vacate any right of way or other permitted area, it is the Franchisee's responsibility to resolve any question of Franchisee's continued occupancy or use of such areas directly with the owner of such areas, and the City has no obligation whatsoever with respect thereto.

C. In the event that Franchisee fails or refuses to relocate its facilities as required by the City following receipt of written notice of such request and within the time periods set forth herein, the City may thereafter protect, support, temporarily disconnect, remove or relocate any or all part of Franchisee's facilities upon ten (10) days' prior notice and charge Franchisee for costs incurred. Such costs shall be paid within thirty (30) days following receipt of an invoice together with reasonable supporting documentation evidencing such costs.

D. All provisions of FMC 11.01.170(G)(5) and FMC 11.01.180, and RCW 35.99.070 as written or hereafter amended, are incorporated by reference herein, as if fully set forth.

Section 7. Franchisee to restore affected areas.

Subject always to the cost apportionment requirements of Section 6 above, as they may apply and to the provisions of FMC 11.01.180, as they may apply, the Franchisee agrees to the following:

A. Whenever Franchisee damages or disturbs any location in or near the right-of-way or other permitted area, Franchisee agrees promptly to restore such area to its original or better condition at its sole expense and liability, to the reasonable satisfaction of the City Engineer and consistent with FMC 11.01.170(H). Franchisee promises likewise to restore and patch all surfaces cut and to repave entirely any such portions of the right-of-way or other permitted areas as reasonably determined by the City Engineer to maintain and preserve the useful life thereof. Franchisee promises that any damage or disturbance to facilities, fixtures or equipment of the City or others shall be promptly repaired to standards reasonably approved by the City Engineer. For pavement restorations, any resulting patch or restoration shall be thereafter properly maintained in good condition and repair by Franchisee until such time as the area is resurfaced or reconstructed.

B. Whenever Franchisee damages or disturbs any area in or near the public right-of-way or permitted areas, or plans to do so, Franchisee stipulates the City may:

1. require Franchisee to repave the entire lane within any cut or disturbed location, or greater area, to the extent it may be affected by Franchisee's activities;

2. require Franchisee to common trench with any other underground installation in the right of way, with cost sharing to be negotiated between the parties involved, or in the absence of agreement, as directed by the City Manager or his/her designee; and/or

3. in order to avoid frequent or needless street cuts, to minimize disruption of infrastructure, to forestall or relieve exhaustion of rights of way capacity, to protect environmentally sensitive areas, or to meet other foreseeable needs of the City, and consistent with Section 11 of this franchise, require Franchisee to install additional conduit or conduit capacity and related access facilities in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the City and/or other franchisees and licensees, as directed by the City Manager or his/her designee in accordance with RCW 35.99.070.

C. Should Franchisee fail or delay in performing any obligation here or elsewhere stated, or where the City Manager or his/her designee deems reasonably necessary to protect the public right-of-way or to avoid liability, risk or injury to the public or the City, the City Manager or his/her designee may proceed to perform such obligation, including any remedial or preventive action deemed necessary, at Franchisee's sole expense and liability, except where otherwise required by law, but no action or inaction by the City Manager or his/her designee shall relieve Franchisee of its obligation to indemnify and hold the City harmless as set forth hereafter. At least ten (10) days prior to undertaking corrective effort, the City Manager or his/her designee shall notify Franchisee, except consistent with FMC 11.01.180 no notice is needed if the City Manager or his/her designee declares an emergency or determines a need for expedient action. This remedy is supplemental and not in the alternative to any other municipal right.

Section 8. Information, public records, good engineering, inspections.

A. Franchisee promises to supply and maintain and keep updated at no cost to City, and to make available, any reasonable information related to the construction, operation or repair of Franchisee's facilities as requested by the City Manager or his/her designee to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Said information may include a location of existing facilities, maps, plans, and operational data, and drawings of Franchisee's underground installations, in the City of Fife or County of Pierce. Said information may be requested either in hard copy and/or electronic format compatible with the City's data base system, as now or hereafter existing, including the City's geographic information system (GIS) data base. Franchisee promises to provide the City access to all books and records related in whole or in part to construction, operation or repair of the facilities located within the franchise area, consistent with FMC 11.01.310. Nothing in this section shall be read to require Franchisee to violate state or federal law protecting subscriber privacy.

B. Franchisee stipulates that it understands that pursuant to Chapter 42.56 RCW, Washington law limits the ability of the City to shield from public disclosure information given to the City by Franchisee. Accordingly, the parties agree to work together to avoid disclosures of information which would result in economic loss or damage to Franchisee because of anticipated mandatory disclosure requirements to third persons. To the extent Franchisee has provided documents to the City that constitute business or trade secrets and/or proprietary information, Franchisee 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. Franchisee 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 Franchisee under Washington's open public records law. City promises to provide reasonable notice and opportunity to Franchisee to defend and/or seek a protective order preventing disclosure under the open public records law. City agrees not to contest Franchisee's motion to intervene in any case involving disclosure of Franchisee's records, should Franchise decide to become a third party intervenor in such a case.

C. Franchisee promises all of its property and facilities located in the City's rights-of-way shall be operated and maintained in good order and condition and in accordance with good engineering practice. In connection with the civil works of Franchisee's system, including trenching, paving, compaction and locations, and consistent with FMC 11.01.170, Franchisee promises to comply with the Washington State Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction, edition currently in use by the City, and all other relevant standards and City ordinances and regulations, all as now or hereafter amended.

D. Franchisee promises its system shall comply with the applicable federal, state and local laws, including the National Electric Safety Code, Washington's Safety Standards for Telecommunications, and Washington's Safety Standards for Electrical Workers, where applicable.

E. Consistent with FMC 11.01.190, the City reserves the right to inspect and approve Franchisee's installations during construction, repair or installation, and after completion. Franchisee's facilities shall be subject to a continuing right of reasonable inspection and reasonable testing by the City, to determine compliance with the terms of this Franchise and the provisions of Title 11 FMC. For other than routine inspections associated with installation or cutting or repairs relating to the right-of-way, the City Manager or his/her designee normally gives reasonable notice to the Franchisee of the nature of the municipal concern and an opportunity for Franchisee to respond prior to taking further enforcement action. No prior notice is needed in the event the City Manager or his/her designee deems there is a risk to the public health or safety or Franchisee has previously been provided notice of the nature of the risk and has failed to respond within a reasonable period of time following receipt of such notice. Where the City Manager or his/her designee determines Franchisee has created a risk to the public health or safety within the franchise area and requiring a municipal response and remedial action, an order may be issued by the City Manager or his/her designee, with a compliance schedule. Other than the costs arising out of routine inspection and routine testing, all costs of municipal inspections, remediation, and enforcement, including staff time, are to be paid by Franchisee.

F. The City shall have the right, upon written request, to be notified and present when the Franchisee's facilities located within the franchise area are tested by the Franchisee.

Section 9. Limited access, no obstruction, accommodation.

A. The City reserves the right to limit or exclude Franchisee's access to a specific route, or to any public right-of-way when, in the reasonable judgment of the City Manager or his/her designee, there is inadequate space, a pavement cutting moratorium (subject to the requirements of applicable law) unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reasonable cause determined by the City Manager or his/her designee in his/her reasonable discretion, provided, it shall do so consistent with state and federal law.

B. Franchisee will not obstruct, hinder, damage, or otherwise interfere with municipal infrastructure uses of the right of way or other permitted areas. Except where otherwise authorized in writing, Franchisee shall maintain a minimum underground horizontal separation of five (5) feet from City utilities; provided, that for development in new areas, the City, together with Franchisee and other utility purveyors or authorized users of the right-of-way, will develop and follow the City Engineer's determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this franchise.

C. In addition, subject however to Ch. 83, Laws of 2000, the City Manager or his/her designee may determine with respect to uses permitted under this franchise, in the exercise of reasonable discretion, when and where reasonable accommodation shall be made by Franchisee to the City for public needs or, where requested, other third party needs, how such accommodation should be made, and a reasonable apportionment of any expenses of the same provided that this franchise creates no third party beneficial interest in any other entity or any enforceable contractual right to require the City to order such accommodation. Notwithstanding the foregoing, it remains the responsibility of the Franchisee to anticipate and avoid conflicts with other right-of-way occupants or users, other utilities, Franchisees, or permittees existing within the right-of-way prior to Franchisee's initial installation of its facilities. The City assumes no responsibility for such conflicts.

D. In administering this provision, the City understands that private property may not be taken or damaged without just compensation as required by Article I, Section 16 of the Washington State Constitution and section 6 of Ch. 83, Laws of 2000 with respect to any specific loss or damage occasioned to Franchisee's lawfully permitted facilities and equipment to be located in the public right of way. Franchisee likewise understands that it does not hold any leasehold or ownership interest in the public right of way and occupies it at the sufferance of the City, subject to the primary purposes and principles as outlined in Chapter 11.01 FMC.

Section 10. Undergrounding.

A. The purpose of this section is to recognize and preserve the City's control over uses of the public right of way, consistent with the municipal policy favoring undergrounding of overhead lines for aesthetic reasons.

B. The City finds that overhead lines and aboveground wire facilities and installations in the right of way and other permitted areas adversely impact upon the public use and enjoyment of such areas. Consistent with FMC 11.01.170(G)(5) and Ch. 12.16 FMC, Franchisee agrees to coordinate its underground installation, maintenance, repair and planning activities with the City's underground plan and policies; provided, in no event shall any third party beneficiary rights be implied or created.

C. Nothing in this section shall be permitted to conflict with section 6 of Ch. 83, Laws of 2000, and the provisions of this section shall be applied in conformity thereto.

Section 11. Facilities for City use.

Consistent with section 6, Ch. 83, Laws of 2000, and FMC 11.01.170(F) and Section 7 of this franchise, at such time when Franchisee is constructing, relocating, or placing ducts or conduits in public rights of way, the City Manager or his/her designee may require Franchisee to provide the City with additional duct or conduit, or conduit and related structures necessary to access the conduit at mutually convenient locations. In such event, the parties further agree that the City's access points to conduit in Franchisee's system shall be at least sufficient to permit reasonable municipal access for municipal needs, provided that:

A. The City enters into a contract with the Franchisee consistent with RCW 80.36.150. The contract rates to be charged shall be in accordance with RCW 35.99.070.

B. The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of the Franchisee.

C. The City shall require that any other entity that is granted permission to use additional duct or conduit and related access structures, obtains written approval from Franchisee prior to attaching to or otherwise using a facility or structure in the right-of-way that is owned by Franchisee.

D. This section shall not affect the provision of an institutional network by a cable television provider under federal law.

E. Except in cases of Emergency, Franchisee shall notify the City Engineer at least 14 days prior to opening a trench at any location within the franchise area in order to allow the City to exercise its options as provided herein.

F. The value of the additional duct or conduit requested by the City shall not be considered a public works construction contract.

Section 12. Waiver, indemnity, no estoppel, no duty.

The Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, losses, judgments, awards, or liability to any person, including claims by the Franchisee's own employees to which the Franchisee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the Franchisee, its agents, servants, officers, or employees in performing under this franchise are the proximate cause, except to the extent caused by or arising from the negligence or any willful or malicious action on the part of the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants. The Franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, losses, judgments, awards, or liability to any person

including claims by the Franchisee's own employees, including those claims to which the Franchisee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Franchisee's exercise of the rights granted herein, or by virtue of the City's permitting the Franchisee's use of the City's rights-of-way or other public property. The Franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, losses, judgments, awards, or liability to any person including claims by the Franchisee's own employees, including those claims to which the Franchisee might otherwise have immunity under Title 51 RCW, based upon the City's inspection or lack of inspection of work performed by the Franchisee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise, or pursuant to any other permit or approval issued in connection with this franchise, except to the extent caused by or arising from the negligence or any willful or malicious action on the part of the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City to the extent arising as a result of the negligent acts or omissions of the Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, maintenance and/or repair or other work in any public right-of-way or other public place in performance of work or services permitted under this franchise, but shall not include claims to the extent caused by or arising from the negligence or any willful or malicious action on the part of the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants.

Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the Franchisee, then the Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorney's fees and the reasonable costs of the City, including reasonable attorney's fees of recovering under this indemnification clause.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section shall survive the expiration or termination of this franchise.

Franchisee agrees not to sue or seek money damages from the City in connection with any of the types of claims for which Franchisee is promising indemnification herein.

The Franchisee releases and waives any and all claims against the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants for damage to or destruction of the Franchisee's Facilities caused by or arising out of activities conducted by the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants, in the rights-of-way, easements, or property subject to this franchise, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious action on the part of the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants. The Franchisee further agrees to indemnify, hold harmless and defend the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by users of the Franchisee's Facilities as the result of any interruption of service due to damage or destruction of that user's Facilities caused by or arising out of activities conducted by the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious actions on the part of the City, its elected and appointed officials, officers, agents, employees, representatives, engineers and consultants.

Section 13. Insurance.

Throughout the term of this franchise, and as specified herein, Franchisee, 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 Washington with a financial rating no less than "A-" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Guide:

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

1. $1,000,000.00 per occurrence; $3,000,000.00 annual aggregate for bodily injury or death to each person;
2. $1,000,000.00 per occurrence; $3,000,000.00 annual aggregate for property damage resulting from any one accident; and
3. $3,000,000.00 annual aggregate for personal injury.

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.

B. Comprehensive automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000.00 for bodily injury per occurrence; $3,000,000.00 annual aggregate; and $1,000,000.000 property damage each occurrence; $3,000,000.00 annual aggregate for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $500,000.00 per occurrence. In the case that Franchisee subcontracts with others, Franchisee shall require each subcontractor to similarly provide worker's compensation insurance for all of subcontractor's employees, unless such employees are covered by the protection afforded to Franchisee, through Franchisee's insurance coverage.

D. 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.

E. The liability insurance policies required by this Section shall be maintained by the Franchisee 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 the Franchisee is operating without an authorization or franchise hereunder, or is engaged in the removal of its Facilities. The Franchisee 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. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate 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. The Franchisee'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 the Franchisee's insurance and shall not contribute to it. The Franchisee must file the required insurance certificate annually. The Franchisee, through policy endorsement, shall waive its right of subrogation against the City for all claims and suits.

F. In addition to the coverage requirements set forth in this Section, each such insurance policy shall contain the following endorsement:

"Should any of the described policies be cancelled before the expiration date thereof, the issuing insurer will mail written notice in accordance with the policy provisions to the certificate holder named within the stated time frames of 30 days, except for reason of non-payment of premium at 10 days. Failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

G. Within thirty (30) days after receipt by the City of said notice, the Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

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

Section 14. Surety, surety fund.

A. Consistent with FMC 11.01.230, the grant of franchise by the City to Franchisee is conditioned upon Franchisee's presentment of a performance bond in the full amount of the work to be performed under this franchise, including the cost of removing Franchisee's facilities in the case of nonperformance by Franchisee or abandonment by Franchisee of Franchisee's facilities, or for any other cost associated with Franchisee's occupation of the franchise area and to ensure its performance hereunder. Said bond(s) must meet with approval of the City Attorney, which approval shall not be unreasonably withheld, conditioned or delayed. Said bond(s) shall be required to remain in full force and effect until twelve (12) months following the term of this franchise. Prior to City's accessing the performance bond, City shall give Franchisee written notice of City's intention to access the performance bond and the date and amount of such intended access together with written documentation of the loss, damage or expense for which City seeks reimbursement from the performance bond. City shall provide such notice and documentation to Franchisee not more than thirty (30) days after the date of the occurrence causing City's claimed loss, damage or expense. Failure to provide such notice and documentation within such time period shall result in a waiver by City of the right to access the performance bond.

B. The requirements of this Section will apply whenever Franchisee intends to perform any work in the franchise area wherein such work will damage or has the tendency to damage City right-of-way.

Section 15. Taxes, fees.

A. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right-of-way for telephone business purposes, as that activity is legally defined in that context. Franchisee agrees if this prohibition is removed, that the City may assess a reasonable franchise fee, after engaging in good faith negotiations with Franchisee, that is consistent with any applicable requirements of the 1996 Federal Telecommunications Act. Although good faith negotiation is required before the City assesses a franchise fee, it is not necessary that the parties reach agreement on the franchise fee. In addition, Franchisee acknowledges and accepts the authority of the City to impose certain fees pursuant to section 8 of Ch. 83, Laws of 2000. Fees that may be imposed on Franchisee by the City include, but are not limited to those set forth in Chapter 11.01, Article III FMC, as written or hereafter amended. Any such fees imposed after the effective date of this franchise will be due and payable upon demand by the City.

B. The parties agree that nothing in this franchise shall limit the City's power of taxation, as may now or hereafter exist, including the imposition of utility taxes on telephone

business under Chapter 3.60 FMC, and that a franchise fee paid under this franchise is not payment in lieu of any applicable tax.

Section 16. Franchise administration, abandonment, termination, revocation, remedies.

A. General administration of this franchise for the City is through the City Manager.

B. The City Manager or his/her designee may resolve conflicts and develop procedures needed to implement and enforce the franchise provisions in his/her reasonable discretion. The City Manager or his/her designee may grant exceptions or impose additional requirements relating to the public interest in particular circumstances in the exercise of reasonable discretion, but the same shall not be a defense to any franchise obligation unless set forth in writing by the City Manager or his/her designee. Exceptions are revocable. The City Manager or his/her designee may cause to be issued inspection or compliance orders with notice together with a compliance schedule as deemed necessary. For the performance of all franchise obligations, Franchisee understands that time is of the essence.

C. Should Franchisee wish to challenge any obligation or requirement arising under this franchise, Franchisee must submit in writing its challenge, with verification, showing the basis of Franchisee's position. The City Manager or his/her designee may also request any additional information deemed necessary. Within twenty (20) days after receiving Franchisee's submittal and following receipt of any requested additional information, the City Manager or his/her designee shall issue a decision, and in the case of any challenged cost, a finding determining the true and allowed amount of said cost. The City Manager or his/her designee may set off any allowed cost against any other cost owing the City, whether under this franchise or otherwise arising between Franchisee and the City.

D. Franchisee may appeal any decision of the City Manager or his/her designee by filing a written notice of appeal within thirty (30) days of the date of issuance by the City Manager or his/her designee. The notice must include a copy of the decision and record submitted to the City Manager or his/her designee by Franchisee. The appeal procedure is governed by FMC 11.01.280, as written or hereafter amended.

E. The revocation, reduction of franchise term, or forfeiture of franchise is governed by FMC 11.01.280 and .290 as written or hereafter amended. Remedies and penalties are set forth in FMC 11.01.270 and .300, as written or hereafter amended.

F. This franchise may be revoked by the City Council by resolution in the event the Franchisee or any of Franchisee's lessees or other users shall fail, after notice or demand and a reasonable period of time to comply with any of the terms, conditions, or obligations imposed upon the Franchisee hereunder. No forbearance by the City of any term or condition of this franchise in any instance or at any time shall ever comprise a waiver or estoppel of the City's right to enforce said term condition.

G. Franchisee may abandon and surrender its facilities to the City upon six (6) months written notice to the City Manager. Abandonment shall be subject to acceptance by the City, by a resolution of acceptance adopted by the City Council. Abandonment by Franchisee will include the conduit owned by Franchisee. The City should have a reasonable basis to declare abandonment by Franchisee, such as not providing service for a period of six months or longer, or a letter expressing such intent from the Franchisee. Franchisee shall not be considered to have abandoned its facilities or to have breached the Franchise terms if Franchisee reduces the amount of right-of-way occupied.

H. Upon abandonment, non renewal, revocation, or expiration of this franchise and if no extension is granted, Franchisee may, at the discretion of the City Manager, be required in part or entirely, to remove all its fiber, wire, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the franchise. Alternatively, the City Manager may direct, limit or condition Franchisee's removal, sale or continued use or abandonment of Franchisee's facilities and equipment, either by agreement or through means of any other lawful municipal power or right. Subject to the City's prior approval, which shall not be unreasonably denied, delayed or conditioned, Franchisee may abandon underground fiber optic cable in place, provided all electronics are removed. The City may continue to invoke any provision of this franchise against Franchisee or any successor entity enjoying de facto franchise privileges after revocation or expiration. The City may take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interests of the City and its residents.

Section 17. Acts discretionary, reservation of authority.

A. All City acts undertaken pursuant to this franchise shall be deemed discretionary, guided by considerations of the public health, safety, esthetics and convenience, and sections 1, 2, and 4 of this franchise, and Title 11 FMC. Franchisee agrees that the City reserves all municipal powers now or hereafter granted by law, including without limitation the power to tax and license, regulate activities within its right of way (except those under exclusive WUTC or FCC authority or as otherwise preempted), to regulate the use of land within its jurisdiction as permitted by law, to protect the public health and safety, and regulate and control the use of public right of way.

B. Should Franchisee have any question as to a conflict or ambiguity with respect to its rights under this franchise or applicable federal or state law, it agrees to first submit the same to the City Manager, with any supporting materials or authorities. The City Manager will proceed under Section 16 herein. The intent of this provision is to provide a quick and efficient means of understanding and resolving problems arising under this instrument, consistent with the objectives of any general municipal regulatory program, as now or hereafter arising and other applicable laws.

C. The provisions of FMC 11.02.080, .090, and .100 are incorporated by reference into this Section, as if fully set forth, as written or hereafter amended.

Section 18. Transfers.

A. This franchise shall not be sold, leased, assigned, or otherwise alienated without the express written approval of the City, expressed by ordinance or resolution of the City Council passed for that purpose, and no rule of estoppel shall be invoked against the City in case the City shall assert the invalidity of any attempted transfer in violation of this section. Notwithstanding the foregoing, Franchisee may sell, lease, assign or otherwise alienate without the written approval of the City this franchise to any entity controlled by, controlling, or under the common control of the Franchisee, any entity acquiring substantially all of the assets of Franchisee, or to any successor entity in a merger or consolidation involving Franchisee, there being no other change in the resulting entity's ability to meet its financial obligations under this franchise. The City reserves the right to inquire into the ability of any transferee to meet its financial obligations hereunder, in order to determine whether any transfer requiring consent is in the public interest and should be approved, denied, or conditioned pursuant to FMC 11.04.280. The Franchisee and any prospective transferee shall assist the City in any such inquiry and any failure to do so may result in denial of the transfer request.

B. The City reserves the right to invoke any or all provisions of this franchise upon the Franchisee's successors or assigns, judgment creditors, or distributees of facilities or property used in enjoyment of privileges conferred herein, whether or not stated elsewhere, all without waiver of the right to withhold consent not expressly given of any such transfer and/or require a new franchise.

C. Franchisee will not permit installations by others in areas authorized under this franchise, without prior written approval from the City Manager or his/her designee, which approval will not be unreasonably withheld, conditioned or delayed, and subject to any requirements of law, ordinance or regulation. Such approval shall not be in lieu of a franchise or other requirements of the City. Whether or not permitted, Franchisee remains responsible for all third party users permitted or allowed by Franchisee for compliance with this franchise. The intent of this provision is so third parties who might otherwise desire to use Franchisee's facilities are also required to comply with City requirements regarding franchises, leases, licenses, or other uses of City right of way, as may apply.

D. Franchisee agrees that, upon a condemnation proceeding or other negotiation by the City to acquire the properties of the Franchisee, it will not have any right to receive payment or award on account of this franchise or permissions granted hereunder. The City shall provide notice to Franchisee of any such condemnation proceeding or other negotiation by the City to acquire the properties of the Franchisee. Franchisee waives all such claims against the City. The City shall have no obligation to make any payment to Franchisee or award in condemnation for any other asset or interest of Franchisee, except as required under the State of Washington and United States Constitutions or as state or federal laws may require.

Section 19. Amendment of Franchise; Renewal.

Consistent with Chapter 11.02 FMC, a new franchise application shall be required if Franchisee desires to extend its franchise area or to locate its Facilities in City rights-of-way which are not included in this franchise.

If Franchisee desires to renew its franchise for an additional term, it must, not more than 180 days nor less than 120 days before expiration of this franchise, file an application with the City for renewal of its franchise.

Section 20. Additional provisions.

A. In the event of significant change in law regulating Franchisee's activities under this franchise or change in municipal authority to act under the terms of the franchise, or significant change or advancement in technology governing Franchisee's functions, the parties, upon mutual agreement, may renegotiate any or all provisions of this franchise, but no obligation to do so is created by this section.

B. This franchise is governed by the laws of the State of Washington and the City of Fife, and venue for any litigation arising out of or in connection with privileges extended herein is stipulated to be in Pierce County Superior Court.

C. Notice. Notice required in this franchise shall be in writing, and sent via certified mail, return receipt requested or by express carrier. Notice shall be deemed given upon receipt or first refusal. Notice shall be provided as follows:

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

With a copy to:

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

For City:
City Manager
5411 23rd Street East
Fife, WA 98424
Telephone: 253-922-2489

Any changes to Franchisee's information shall be stated in writing and sent to the City Manager, with copies to the City Clerk, to the same address listed above, referencing the title of this franchise, ordinance number, and this Section 20.

D. Provisions of Title 11 FMC as written or hereafter amended, not specifically incorporated by reference into this franchise, are hereby incorporated as if fully set forth herein, as applicable, and Franchisee stipulates to having reviewed the provisions of Title 11 FMC.

E. To the extent not otherwise stated, the requirements of Title 12 FMC, Streets, Sidewalks and Public Places, and Title 17 FMC, Environmental Protection, are further incorporated herein by reference.

F. In the event that either party commences litigation or arbitration proceedings against the other party relating to the performance or alleged breach of this franchise, and subject to Section 12 herein, the prevailing party shall be entitled to all costs, including reasonably attorney's fees incurred, including the costs and attorney's fees associated with an appeal.

G. This grant of franchise shall not constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City that may exist at the time of the grant of franchise.

H. This grant of franchise is a privilege held in the public trust and is personal to the Franchisee.

Section 21. Termination of Existing License.

By mutual consent of the City and Franchisee, the license granted under Ordinance No. 944 is hereby terminated.

Section 22. Ordinance Effective Date.

This Ordinance shall be in full force and effect no sooner than five (5) days after publication as required by law; and after acceptance of the ordinance by Franchisee. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Section 23. Severability.

Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 24. Force Majeure.

In the event the Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor conditions, the Franchisee shall not be deemed in breach of provisions of this Franchise. If the Franchisee believes that circumstances beyond its reasonable control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, the Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. The Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City; provided that, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, public rights-of-way, public property, or private property.

Introduced the 24th day of SEPTEMBER 2013.

Passed by the City Council on the 8th day of OCTOBER, 2013.

David K. Zabell, City Manager

ATTEST:

Carol Etgen, City Clerk

APPROVED AS TO FORM:

Gregory F. Amann, Assistant City Attorney

ACCEPTANCE

I, Anita M. LaPlant, am a Real Estate Manager III for Sprint Communications Company L.P., a Delaware limited partnership and am authorized to accept the above referenced franchise on behalf of Sprint Communications Company L.P.

I certify that this franchise ordinance and all terms and conditions thereof are accepted without qualification or reservation.

Dated this 28th day of October, 2013.

Anita M. LaPlant

Signature

STATE OF KANSAS)
) ss.
County of JOHNSON)

I certify that I know or have satisfactory evidence that Anita M. LaPlant is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath, stated that she was authorized to execute the instrument and acknowledged it as the Real Estate Manager III for Sprint Communications Company L.P., a Delaware limited partnership to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 10/28/2013.

Charlene A. White

NOTARY PUBLIC
Print Name: Charlene A. White
My appointment expires: 1/31/2015

NOTARY PUBLIC – State of Kansas
CHARLENE A. WHITE
My Appt. Expires 1/31/2015

CID 511; AID 178601

NOTICE OF ORDINANCES PASSED BY THE CITY OF FIFE ORDINANCE NO. 1846 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, EXTENDING A MORATORIUM ON THE CREATION, ESTABLISHMENT, LOCATION, OPERATION OR PERMITTING OF GAMBLING PREMISES FOR AN ADDITIONAL SIX MONTH PERIOD A COMPLETE COPY OF THE ORDINANCE IS ON THE City of Fife website, www.cityoffife.org ORDINANCE NO. 1847 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 A COMPLETE COPY OF THE ORDINANCES ARE ON THE City of Fife website, www.cityoffife.org Carol Etgen City Clerk **Publish Dates:** 10/10/2013-10/24/2013