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MEMORANDUM **TRANSPORTATION & DEVELOPMENT DEPARTMENT MEMO TDA13-019**

DATE: SEPTEMBER 13, 2012

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER
PAT MCDERMOTT, ASSISTANT CITY MANAGER
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR

FROM: MARGARET COULTER, REGULATORY AFFAIRS MANAGER

SUBJECT: INTRODUCTION OF ORDINANCE NO. 4385 APPROVING A RENEWAL TO THE ENCROACHMENT PERMIT AND AGREEMENT FOR THE USE OF PUBLIC PROPERTY EXECUTED NOVEMBER 9, 2007 BETWEEN SPRINT COMMUNICATIONS COMPANY L.P. AND THE CITY OF CHANDLER

RECOMMENDATION: Staff recommends approval of Ordinance No. 4385 for Renewal to the Encroachment Permit and Agreement for the Use of Public Property Executed November 9, 2007 between Sprint Communications Company L.P. and the City of Chandler.

BACKGROUND: Sprint Communications Company L.P., including its predecessor companies, has had a Use Fee Agreement with the City since 1986 for its long haul Interstate telecommunications fiber system. There is no new construction planned at this time. Council last approved this agreement in 2007 by Ordinance No. 3944 which expires November 8, 2012. This Ordinance extends the agreement for an additional five years and sets the new annual footage fee rates for this time period by amending Section 4. It also updates the contact information for invoicing.

FINANCIAL IMPLICATIONS: It is estimated that there will be 58,799 linear feet in place in public property. The right of way use fee will amount to $118,658.83 owed on November 9, 2012, which will be increased by 2.6 percent each year thereafter for the term of the agreement resulting in fees of $121,743.95 due on November 9, 2013; $124,909.29 on November 9, 2014; $128,156.93 on November 9, 2015 and $131,489.01 on November 9, 2016.

PROPOSED MOTION: Move to approve Ordinance No. 4385 for Renewal to the Encroachment Permit and Agreement for the Use of Public Property Executed November 9, 2007 between Sprint Communications Company L.P. and the City of Chandler.

Attachment: Ordinance No. 4385

ORDINANCE NO. 4385

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING A RENEWAL TO THE ENCROACHMENT PERMIT AND AGREEMENT FOR THE USE OF PUBLIC PROPERTY EXECUTED NOVEMBER 9, 2007 BETWEEN SPRINT COMMUNICATIONS COMPANY L.P. AND THE CITY OF CHANDLER

WHEREAS, the City Council approved Resolution No. 3502 on November 5, 2002 which granted an Encroachment Permit and Agreement for the use of Public Property (AGREEMENT) between Sprint Communications Company L.P. (COMPANY) and the City of Chandler in order to provide interstate telecommunications services that uses City right-of-way for fiber optic cable as part of the COMPANY's trunk line between Los Angeles, California and El Paso, Texas; and

WHEREAS, the City Council approved Ordinance 3944 on November 9, 2007 which was a Restatement of the Contract and Amendment (AMENDMENT ONE) to the AGREEMENT in order to renew the AGREEMENT for an additional five (5) year term and establish fees; and

WHEREAS, Ordinance No. 4385 renews the AGREEMENT as amended for additional five (5) year terms and establishes a new fee structure, and

WHEREAS, both the CITY and COMPANY wish to exercise the option to extend the Agreement; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AS FOLLOWS:

SECTION I: That the Mayor of the City of Chandler is herewith authorized to execute this Ordinance as detailed in Exhibit A, renewing the term for an additional five (5) years pursuant and authorizing automatic extensions of two additional five (5) year terms.

SECTION II: That the various City officers and employees be and they are hereby authorized and directed to perform all acts necessary to give effect to this Ordinance.

SECTION III: This Ordinance shall become effective thirty days from and after its final adoption.

INTRODUCED AND TENTATIVELY ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this ___day of _____, 2012.

ATTEST:

_____ _____

CITY CLERK MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____day of _____, 2012.

ATTEST:

_____ _____

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4385 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the _____ day of _____, 2012 and that a quorum was present thereat.

_____

City Clerk

Published:

APPROVED AS TO FORM:

_____

Exhibit A

AMENDMENT TWO

AMENDMENT TWO TO THE ENCROACHMENT PERMIT AND AGREEMENT BETWEEN SPRINT COMMUNICATIONS COMPANY, L.P. AND THE CITY OF CHANDLER FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OR-WAY AND PUBLIC PLACES TO AUTHORIZE AN EXTENSION FOR A SECOND TERM AND AUTHORIZE AUTOMATIC EXTENSIONS FOR TWO ADDITIONAL TERMS UPON SPECIFIED CONDITIONS

Amendment Two to the Encroachment Permit and Agreement for the Use of Facilities in the City's Rights-of-Way and Public Places (hereinafter "AGREEMENT") is entered into this 9th day of November, 2012 ("Amendment Effective Date"), by and between the City of Chandler, Arizona, a political subdivision of the State of Arizona (hereinafter "CITY"), and Sprint Communications Company, L.P. and its affiliates (hereinafter "COMPANY"),

WHEREAS, the CITY and COMPANY entered into an AGREEMENT on November 5, 2002 pursuant to Resolution 3502,

WHEREAS, the CITY and COMPANY entered into a Restatement of Contract and Amendment to the AGREEMENT on November 9, 2007, as authorized pursuant to Ordinance 3944; and

WHEREAS, Section 4 of the AGREEMENT provides for a 2.6 percent increase in the fees annually and this rate will continue annually for the next five (5) year term with conditions set for additional five year terms, and

WHEREAS, Section 5 of the Agreement allows the renewal for additional five (5) year terms upon the mutual agreement of the parties, and

NOW THEREFORE, the Agreement shall be amended as follows:

1. Section 4 of the Agreement as amended is hereby amended to read as follows:

"SECTION 4. FEES AND CHARGES

A. The right of way use fee will amount to $118,658.83 owed on November 9, 2012, which will be increased by 2.6 percent each year thereafter for the term of the Agreement resulting in fees of $121,743.95 due on November 9, 2013; $124,909.29 on November 9, 2014; $128,156.93 on November 9, 2015 and $131,489.01 on November 9, 2016.

B. The annual rate of increase will be reviewed at the end of each five (5) year term after November 9, 2016 to determine if it is still reasonable in relation to the Consumer Price Index, and if deemed reasonable will continue to escalate each year by 2.6 percent during the remaining five-year term renewals per Section 5.2."

C. Invoices will be sent to:

Sprint Communications Company L.P.,
Attention: Lease Administration, KSOPHT0101-Z2000
6391 Sprint Parkway
Overland Park, KS 66251-Z2020.

2. Section 5 of the Agreement as amended is hereby amended to read as follows:

"SECTION 5. TERM OF AGREEMENT.

5.1. Term. The term of this Agreement and duration of the rights privileges and authorizations granted hereunder shall be for five (5) years from November 9, 2012, through November 8, 2017.

5.2 Automatic Renewal. This term shall automatically be extended for two (2) additional five-year terms on the anniversary date of the extension of the Agreement unless either party requests a change, in writing, to the Agreement in which case: 1) if the parties agree to change, in writing, a provision of the contract which either party considers substantive, the proposed amendment will be subject to City Council approval, or 2) if the parties cannot agree to a change, the contract will expire at the end of the then current term unless terminated pursuant to the terms of the Agreement."

3. Except as expressly stated herein, the terms of the Agreement remain unchanged and in full force and effect. To the extent that the terms of this Amendment conflict with any term or condition of the Agreement as amended, the terms of this Amendment shall prevail.

This Amendment executed this _____ day of _____, 2012:

CITY OF CHANDLER,
an Arizona municipal corporation

_____
Mayor

Attest:

_____
City Clerk

SPRINT COMMUNICATIONS COMPANY L.P.

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

Witness:

_____

Title: _____

APPROVED AS TO FORM:

_____
City Attorney