

## **PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT**

THIS PRELIMINARY ENGINEERING REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into, and effective as of the date of the last signature on this Agreement, by and between Sprint Communications Company L.P. (“SCCLP”), whose mailing address is C/O Cogent Communications, LLC, 2450 N Street, NW, 4<sup>th</sup> Floor, Washington, D.C. 20037, Attn: VP of Infrastructure, and the City of Riverside, a California municipal corporation (“City”) whose mailing address is 3900 Main Street, 4<sup>th</sup> Floor, Riverside, CA 92522. Sprint Communications Company LLC is now a wholly-owned subsidiary of Cogent Communications Holdings, Inc. pursuant to Cogent Communications Holdings, Inc.’s (together with its subsidiaries) acquisition of Wireline Network Holdings, LLC (together with SCCLP and its other subsidiaries). SCCLP and City may be referred to individually as a “Party” or collectively as the “Parties.”

### **BACKGROUND:**

A. City is planning a grade separation project (“Project”) in the City of Riverside, California within Burlington Northern Santa Fe Railroad (“BNSF”) right of way (“ROW”) in the approximate area of Third Street and Commerce Streets, which Project may impact SCCLP fiber optic cable and facilities located in the ROW. SCCLP owns fiber optic cable within the ROW pursuant to a Memorandum of License Agreement with BNSF dated 12/20/1991.

B. As a result of the Project, it may be necessary for SCCLP to attend meetings, exchange information, and review and prepare plans to modify its facilities in order to accommodate the Project (“Preliminary Work”).

C. SCCLP, under the terms stated in this Agreement, is willing to perform the Preliminary Work, provided City reimburses SCCLP for all of its actual costs, both direct and indirect.

### **AGREEMENT**

In consideration of the promises and mutual covenants herein contained, SCCLP and City agree as follows:

1. SCCLP will perform the necessary Preliminary Work subsequent to the execution of this Agreement by both Parties subject to the terms and provisions of this Agreement.

2. City will bear and be responsible for and pay in accordance herewith all direct and indirect costs incurred by SCCLP and relating to the above referenced Preliminary Work, including, but not limited to, labor, damages, administrative overhead, engineering review work, taxes, and legal fees.

3. The initial estimated cost of the Preliminary Work is estimated to be One Hundred Forty-Three Thousand Nine Hundred Twenty-Eight Dollars (\$143,928.00), as set forth in **Exhibit A**. Final actual costs may be more or less than such estimate, which will not be

construed as a limitation of costs for the project. SCCLP will promptly provide notice to City if it becomes obvious to SCCLP that the final actual costs will exceed the foregoing by more than ten percent (10%).

4. City must furnish a cashier's check or wire transfer in the amount of One Hundred Forty-Three Thousand Nine Hundred Twenty-Eight Dollars (\$143,928.00) to SCCLP before commencement of the Preliminary Work. Any and all costs in excess of the amount of the check or wire transfer will be billed to City when the Preliminary Work has been completed, and City will be liable for any such amount, which exceeds the amount of the check or wire transfer. Wire transfers shall be sent to:

Sprint Communications Company L.P.  
Attn: Walter Churaman  
Cogent Communications  
2450 N Street, NW Washington, DC 20037

5. Within a reasonable period of time after SCCLP pays all of the invoices associated with the Project and the drawings are complete, SCCLP will furnish an accounting of final actual costs and provide City an invoice of the same. Should the invoice exceed the amount of the cashier's check or wire transfer, City shall pay the full amount of such invoice within thirty (30) days after receipt.

6. City will indemnify and hold harmless SCCLP, its officers directors, agents and employees from all loss, claims, liability and costs incurred by SCCLP, including, without limitation, losses resulting from claims for damages to property or injuries to or death of persons, judgments, court costs and attorney's fees, which arise out of or are claimed to have arisen out of the acts or omissions of City, its contractors, agents, or employees with respect to the Project, including the construction, maintenance, presence on the right of way, or other operations or activities of City.

7. It is expressly understood by the Parties that SCCLP is not abandoning any rights, title, or interest it may have in the above-described land, all such rights, title, and interest being expressly reserved.

8. This Agreement supersedes every antecedent or concurrent oral and/or written declaration and/or understanding pertaining to the fiber optic cable modification work by and between SCCLP and City.

9. The terms of this Agreement shall be binding and inure to the benefits of the Parties hereto and their successors and assigns.

10. Each Party represents and warrants to the other Party that the consent or approval of no third-party, including, without limitation, a lender, is required with respect to the execution of this Agreement, or if any such third-party consent or approval is required, such Party has obtained any and all such consents or approvals.

11. Miscellaneous Provisions:

a. Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received when (i) personally delivered (including delivery via commercial messenger service), (ii) one (1) business day after being deposited with a nationally recognized overnight courier service, charges prepaid, and properly addressed for next-day delivery, or (iii) transmitted via e-mail to the applicable email address(es) set forth below. For purposes of this subsection, the addresses of each Party shall be that set forth below the signature of such Party hereto with a copy to the other addressees set forth below the signature of such Party. Either Party may change its address for notice from time to time by delivery of at least ten (10) days prior written notice of such change to the other Party hereto in the manner prescribed herein.

b. This Agreement shall be construed under and in accordance with the laws of the State where the Property is located, and all obligations of the Parties created hereunder are performable in County where the Property is located.

c. Neither Party may assign this Agreement without the other Party's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. Any purported assignment of this Agreement by a Party without the other Party's prior written consent shall be void.

d. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of any such invalid, illegal or unenforceable provision, there shall be automatically added to this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

e. This Agreement constitutes the sole and only agreement of the Parties hereto with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter hereof and cannot be changed except by their written consent.

f. Time is of the essence with respect to this Agreement.

g. The Parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. Signatures hereon may be executed and/or delivered by DocuSign, email or other acceptable electronic means.

h. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or holiday observed by federal savings banks in the State where the Property is located, the date for such determination or action shall be extended to the first business day immediately thereafter.

i. Each Party hereby represents and warrants to the other that this Agreement has been validly entered into by it, and that it has full legal power, right and authority to perform its obligations under this Agreement.

j. If either Party to this Agreement files a suit to enforce its rights hereunder, the prevailing Party in such suit shall be entitled to collect from the other Party its reasonable attorneys' fees and costs of litigation incurred in connection with such suit.

The Parties have caused this Agreement to be executed by their proper duly authorized officials as of the dates indicated below.

**CITY OF RIVERSIDE**, a California charter city and municipal corporation

**SPRINT COMMUNICATIONS COMPANY L.P.** a Delaware limited partnership

By: \_\_\_\_\_  
City Manager

BY: Dave Schaeffer NAME:  
Dave Schaeffer (May 22, 2024 20:24 EDT)

David Schaeffer

President & CEO  
CEO

Attest: \_\_\_\_\_  
City Clerk

DATE: \_\_\_\_\_

Certified as to Availability of Funds:

BY: RV NAME:  
Robert Bowman (May 23, 2024 14:43 EDT)

Robert Bowman

By: Kristin \_\_\_\_\_  
Chief Financial Officer

Vice President

DATE: 5/23/2024

Approved as to Form:

By: Brandon Mercer \_\_\_\_\_  
Brandon Mercer (May 23, 2024 13:21 PDT)  
Deputy City Attorney

**Exhibit A**  
**Cost Estimate**

# 'Exhibit A'

**SPRINT PROJECT 92766SWII-007**  
**3RD STREET GRADE SEPARATION PROJECT - RIVERSIDE, CA**  
**SPRINT PRELIMINARY ENGINEERING ESTIMATE OF COSTS**  
**ESTIMATE DATE: MAY 06, 2024**

This is an estimate of funding for preliminary engineering required to accommodate The City of Riverside's proposed grade separation of 3rd Street, at the BNSF Railroad Right of Way in Riverside, CA. The proposed project of a new BNSF RR alignment / bridge and grade separation by the City of Riverside will require Sprint to relocate the existing Fiber Optic Facilities within the new BNSF RR ROW

The area of design will be within the City of Riverside, CA. The project consists of designing a new alignment for Sprint's fiber optic facilities, coordinating with Sprint engineering vendors, City of Riverside, BNSF Railroad and any other municipalities, utilities or vendors, required to completed the Sprint preliminary design.

The work included in preliminary engineering cost estimate is:

1. Review of improvement plans.
2. Meetings
3. Coordination with the City of Riverside, BNSF Railroad, RCTC and all utilities involved.
4. Develop a viable relocation plan.
5. Provide cost estimates to City of Riverside for the relocation and or protection of the Sprint Fiber Optic Facilities.

All work on Sprint's facilities will need to be performed by Sprint personnel and/or Sprint approved contractors.

This estimate does not provide for performing any actual relocation work. The costs included are only those necessary to generate project plans and a construction estimate. This estimate is based on limited knowledge of the proposed project, it is not a bid. This estimate assumes that the City of Riverside costs are absorbed by the project and not billed to Sprint.

					<b>PERA Agreement</b>	<b>CONST. Agreement</b>	<b>PROJECT TOTAL</b>
<b>Sprint Labor - Internal</b>							
Outside Plant Engineer	120	hours	\$75	\$9,000			
Supervisor, technician	40	hours	\$75	\$3,000			
Technician, stand by	0	hours	\$75	\$0			
Engineering Records	0	hours	\$75	\$0			
<b>Subtotal</b>					<b>\$12,000</b>	<b>\$0</b>	<b>\$12,000</b>
<b>Sprint Contract Professional Services</b>							
Engineering / Inspection	200	hours	\$100	\$20,000			
Engineering / DESIGN				\$58,520			
<b>Subtotal</b>					<b>\$78,520</b>	<b>\$0</b>	<b>\$78,520</b>
<b>Sprint Contract Vendor Labor, Equipment and Material</b>							
Const. Contractor Potholing	3	day	\$4,000	\$12,000			
BNSF Engineering and Permit	1			\$5,000			
BNSF Railroad Flag	3	day	\$1,750	\$5,250			
<b>Subtotal</b>					<b>\$22,250</b>	<b>\$0</b>	<b>\$22,250</b>
<b>Project Subtotal</b>							<b>\$112,770</b>
<b>G &amp; A Overhead @27.63% of overall project cost</b>							<b>\$31,158</b>
<b>Project TOTAL</b>							<b>\$143,928</b>