

REGULATIONS OF THE DEPARTMENT OF STREETS

CITY OF PHILADELPHIA

RIGHT-OF-WAY MANAGEMENT

Section 1. The Regulations governing Right of Way Management of the Department of Streets, effective January 12, 2006 and amended June 1, 2009, are hereby further amended as follows:

1 Definitions

- (1) Capitalized terms that are not otherwise defined in these Right-of-Way Management Regulations shall have the meanings provided in Section 11-701(1) of The Philadelphia Code.
- (2) "Aggregate Annual Fee" means the total amount of Annual Fees charged under Section 11-706(1) of The Philadelphia Code to all Licensees, as set forth in Section 11-706(1)(c) of The Philadelphia Code and subsection 2.1.1(2) of these Regulations.
- (3) "Americans with Disability Act Ramp Component" or "ADA Ramp Component" means the cost to construct a one square foot area of an ADA ramp. This component is calculated by the Department of Streets using the average cost of items associated with constructing ADA ramps as part of the city's ADA ramp program. The ADA ramp program is part of the city paving program and dictated by federal ADA guidelines and laws.
- (4) "Annual Fee" means the fee charged pursuant to Section 11-706(1) of The Philadelphia Code to Licensees that construct, install, operate or maintain Underground Facilities in the ROW, for the purpose of recovering City costs for managing the Right-of-Way, including the City's Permitting Costs, Ongoing Management Costs, and Street Degradation Allocation.
- (5) "Assessment Date" means July 31 of each Fiscal Year.
- (6) "Committee of Highway Supervisors" means the advisory committee to the Commissioner provided in Section 11-705(5) of The Philadelphia Code.
- (7) "Fiscal Year" or "FY" means the fiscal year of the City, i.e. the annual period commencing on July 1 and ending on June 30.
- (8) "Index Component" means an indexed amount added or subtracted from the Street Degradation Fee, to account for any changes in City costs due to the City's resurfacing program. The Index Component adjustment will be calculated by the Department of Streets according to average cost changes from the July 2011 base price for (1) labor and overhead for the City paving operations workforce, (2) material costs paid by the City as set by the Pennsylvania Department of

10:4:07
2012-01-12 10:4:07
OFFICE OF THE CITY CLERK

Transportation Asphalt Cement Price Index in publication 408, chapter 110.04, and (3) City milling and preparation contract bid prices. The Index Component may be adjusted monthly and will be posted on the last Friday of each month on a Department of Streets web site as well as communicated to all members of the Committee of Highway Supervisors.

- (9) "Ongoing Management Costs" means the costs described in subsection 2.1.1(5)(b).
- (10) "Paving Component" means the cost to pave a square foot of street surface. This component is calculated by the Department of Streets using the average cost of materials, equipment and labor to pave one city block and is based on the age of the street surface at the time construction is completed for the construction permit that was obtained.
- (11) "Permitting Costs" means the costs described in subsection 2.1.1(5)(a).
- (12) "Street Degradation Allocation" means the costs described in subsection 2.1.1(5)(c).
- (13) "Street Degradation Allocation Unit Cost Rate" means the per foot charge established to collect the "Street Degradation Allocation" costs described in subsection 2.1.1(7).
- (14) "Street Degradation Fee" means the fee charged after the issuance of a Construction Permit, to partially compensate the City for the reduction in the useful life of Streets caused by construction in the ROW, that is provided in Section 11-706(2) of The Philadelphia Code and Section 2.2 of these Regulations.

2 Right-of-Way User Fees

2.1 Annual Fee

2.1.1 In General

- (1) Each Licensee shall pay an Annual Fee to compensate the City for its costs incurred in connection with issuing Construction Permits for Underground Facilities of Licensees and reviewing, inspecting, and supervising the ongoing use and occupancy of the Rights-of-Way to construct, install, operate or maintain Underground Facilities of Licensees, and to partially compensate the City in connection with the reduction in the useful life of Streets caused by construction by Licensees in the ROW.
- (2) The Aggregate Annual Fee to be paid by all Licensees shall equal a total of \$ 973,528 for Fiscal Year 2012; shall increase by five (5) per cent for Fiscal Year 2013, to a total of \$ 1,022,204; and shall again increase by five (5) per cent for Fiscal Year 2014, to a total of \$ 1,073,314.

- (3) On the Assessment Date, the Commissioner shall determine the share of the Aggregate Annual Fee to be assessed each Licensee by allocating the amount of the Aggregate Annual Fee among Licensees in accordance with the method referenced in Section 2.1.2.
- (4) The Annual Fee shall be assessed annually, and paid within forty-five (45) days of receiving the City's invoice.
- (5) The Annual Fee shall have three components, to recover the following three categories of City cost relating to management of the ROW:
 - (a) Permitting Costs, comprising the City's costs incurred in connection with permitting, inspection, enforcement, management and oversight activities related to new construction by Licensees in the ROW;
 - (b) Ongoing Management Costs, comprising the City's costs incurred in connection with inspection, management, oversight, and enforcement activities related to completed construction and existing facilities of Licensees; and
 - (c) Street Degradation Allocation, comprising an amount that partially recovers the City's costs in connection with the reduction in the useful life of Streets caused by construction by Licensees in the ROW. The Street Degradation Allocation shall be billed annually, according to the permitting activity of a Licensee, in the form of a Street Degradation Allocation Unit Cost Rate. The Street Degradation Allocation Unit Cost Rate shall be the per foot charge established annually at the beginning of each Fiscal Year. (The City shall recover an additional portion of its costs in connection with the reduction in the useful life of Streets caused by construction by Licensees and City Agencies in the ROW through the Street Degradation Fee).
- (6) The total amount of the Aggregate Annual Fee allocated to Permitting Costs and Ongoing Management Costs together shall be \$ 728,846, \$ 765,288, and \$ 803,552 for Fiscal Years 2012, 2013, and 2014, respectively (which amounts include the five (5) per cent increases provided in subsection 2.1.1(2)). The dollar amount of the Permitting Costs component and the dollar amount of the Ongoing Management Costs component shall be determined as follows:
 - (a) The Commissioner will determine the percentage of the City's ROW management costs attributable to Permitting Costs and the percentage attributable to Ongoing Management Costs.
 - (b) The percentage for Permitting Costs will be multiplied by the amount of the Aggregate Annual Fee that applies to the then current Fiscal Year to determine the dollar amount of Permitting Costs to be allocated among Licensees.

- (c) The percentage for Ongoing Management Costs will be multiplied by the amount of the Aggregate Annual Fee that applies to the then current Fiscal Year to determine the dollar amount of Ongoing Management Costs to be allocated among Licensees.
- (7) The Street Degradation Allocation shall be \$ 244,682, \$ 256,916 and \$ 269,762 for Fiscal Years 2012, 2013, and 2014, respectively (which amounts include the five (5) per cent increases provided in subsection 2.1.1(2)). The Street Degradation Allocation Unit Cost Rate is the Street Degradation Allocation divided by the total number of linear feet for which all Licensees received street opening permits in the Fiscal Year preceding the Assessment Date. The Street Degradation Allocation Unit Cost Rate shall be \$5.14 per linear foot for Fiscal Year 2012, and for subsequent Fiscal Years shall be calculated near the start of each such Fiscal Year and communicated to all Licensees.
- (8) Licensees that are not Franchisees shall pay their allocated shares of the Permitting Costs, Ongoing Management Costs, and Street Degradation Allocation, and the total Annual Fee assessed of each Licensee shall be the sum of such shares. Licensees that are Franchisees are deemed to pay their allocated shares of Ongoing Management Costs and the Street Degradation Allocation as part of any franchise fees they pay to the City pursuant to their franchises, and shall receive a credit for these components of the Annual Fee up to the amount of the franchise fees paid for the Fiscal Year. Franchisees shall, however, pay their allocated share of Permitting Costs, as an Annual Fee separate from and in addition to franchise fees they pay to the City.
- (9) Each Licensee's allocated share of Permitting Costs shall be based on the number of linear feet for which the Licensee received street opening permits in the Fiscal Year preceding the Assessment Date, expressed as a percentage of the total number of linear feet for which all Licensees received street opening permits in the previous Fiscal Year. Each Licensee's allocated share of Ongoing Management Costs shall be based on the total number of linear feet of the Licensee's facilities installed in the ROW as of the end of the Fiscal Year preceding the Assessment Date, expressed as a percentage of the total number of linear feet of Facilities installed in the ROW by all Licensees in that Fiscal Year.
- (10) Each Licensee's allocated share of Street Degradation Allocation Costs shall be calculated as the product of the Street Degradation Allocation Unit Cost Rate, multiplied by the number of linear feet for which the Licensee received street opening permits in the previous Fiscal Year.

2.1.2 Method for Determining the Annual Fee of Each Licensee

The method of determining the Annual Fee of each Licensee shall be established and set forth by the Commissioner in writing, upon consultation with the Committee of Highway Supervisors.

2.2 Street Degradation Fee

2.2.1 In accordance with Section 11-706(2) of The Philadelphia Code, after the issuance of a Construction Permit, the applicant for the Construction Permit shall pay a fee to partially compensate the City for the reduction in the useful life of Streets caused by construction by applicant in the ROW. This Total Street Degradation fee has three separate components: the Index Component, the Paving Component, and the ADA Ramp Component. (The City shall recover an additional portion of its costs in connection with such reduction in the useful life of Streets caused by construction by Licensees in the ROW through the Street Degradation Allocation included in the Annual Fee).

2.2.2 Calculation of Street Degradation Fee

- (1) For street excavation occurring less than two years following the resurfacing or reconstruction of a street, the total Street Degradation Fee shall be \$10.90 per square foot of street surface excavated (of which \$3.85 is the ADA Ramp Component and \$7.05 is the Paving Component), as adjusted by the Index Component.
- (2) For street excavation occurring at least two years but less than five years following the resurfacing or reconstruction of a street, the total Street Degradation Fee shall be \$8.95 per square foot of street surface excavated (of which \$3.16 is the ADA Ramp Component and \$5.79 is the Paving Component), as adjusted by the Index Component.
- (3) For street excavation occurring at least five years but less than fifteen years following the resurfacing or reconstruction of a street, the total Street Degradation Fee shall be \$3.50 per square foot of street surface excavated (of which \$1.23 is the ADA Ramp Component and \$2.27 is the Paving Component), as adjusted by the Index Component.
- (4) No Street Degradation Fee shall be charged for construction in Streets that have not been resurfaced or reconstructed for more than fifteen years.

2.2.3 No Street Degradation Fee shall be charged for construction required by and directly related to an Emergency Condition.

2.2.4 Consistent with subsection 2.1.1(8) of these Regulations, no Street Degradation Fee shall be owed by a Franchisee whose compensation to the City required under its Franchise exceeds its fees due under this Section 2.2.

2.3 Application to City Agencies

In accordance with Section 11-706(3) of The Philadelphia Code, City Agencies shall be required to pay the Street Degradation Fee and an annual ROW management fee equal to

the City's costs incurred in connection with issuing Construction Permits for Underground Facilities and reviewing, inspecting and supervising the ongoing use and occupancy of the Right-of-Way to construct, operate or maintain Underground Facilities as required under Chapter 11-700 of The Philadelphia Code or equivalent compensation; except that the Department of Streets and the Department of Public Property shall not be required to pay a fee that compensates the Departments for their own costs of managing the Right-of-Way.

2.4 Petitions to Reconsider

- 2.4.1 A Licensee that believes its allocated share of the Annual Fee is incorrect for the current Fiscal Year, or that seeks an adjustment of a prior year's allocation based on the actual number of feet permitted or constructed during that year, may petition the Commissioner for reconsideration.
- 2.4.2 Petitions for reconsideration of a current Fiscal Year's allocation must be submitted within fifteen (15) days following the date of the City's invoice. Petitions for reconsideration of a prior Fiscal Year's allocation must be submitted within fifteen (15) days following the Assessment Date for the next Fiscal Year.
- 2.4.3 Petitions must include documentation sufficient to demonstrate that the allocation is incorrect, including, in the case of petitions that challenge the linear feet of installed or permitted facilities the City attributes to the Licensee, as-built plans, facilities audit findings, and/or other information sufficient to demonstrate the linear feet claimed by the Licensee.

2.5 Review by the Commissioner

In accordance with Section 11-706(1)(d) and 11-706(2), no more frequently than every three years, after consultation with the Committee of Highway Supervisors, the Commissioner shall review and, if necessary, recalculate the foregoing Right-of-Way user fees to reflect the City's actual costs incurred in connection with the activities described in Section 11-706(1)(a) of The Philadelphia Code and Street degradation caused by construction by Licensees in the ROW.

3 Right-of-Way Use License and Agreement; License Application

3.1 License Required

- 3.1.1 No Person, other than a Franchisee, may own, construct, operate and/or maintain Facilities in the Right-of-Way unless a Right-of-Way Use License is first issued to the owner of such Facilities; provided, however, that a ROW Use License shall not be required for the installation of water and sewer pipes in Plumber's Ditches, or for the installation or operation of public pay telephones and other End User Devices. Newsstand operators are governed by Section 9-212 of The Philadelphia Code and are not required to obtain a ROW Use License.
- 3.1.2 A Right-of-Way Use License shall be for a term of ten (10) years. A Right-of-Way Use License and the rights, benefits and permissions conferred thereby shall apply to the entire geographic area of the City.
- 3.1.3 Any Right-of-Way Use License shall be authorized and issued only by the Commissioner, and shall not become effective unless or until so authorized and issued. In considering such an authorization, the Commissioner shall consider whether the applicant has demonstrated:

- (1) that it has no substantial history of non-compliance with applicable law and regulation relating to the management of, and the construction and maintenance of Facilities in, Streets and rights-of-way, wherever located; and
- (2) that it possesses all licenses, permits, and authorizations required by the Federal Communications Commission, the PUC, the Commonwealth, and the City as a condition of its using the Right-of-Way and furnishing the Services and operating the Facilities proposed by the applicant.

Decisions of the Commissioner with respect to any application for a Right of Way Use License shall be appealable, within thirty days, to the Board of License and Inspection Review.

3.2 Application

- 3.2.1 Application for a ROW Use License shall be made on the form provided in Appendix A.
- 3.2.2 Within a reasonable period of time after receiving a complete application, the Commissioner shall make a determination, based on the standards enumerated in Section 701(2)(b) of The Philadelphia Code, approving or denying the application in whole or in part. If the application is wholly or partly denied, the determination shall include the reasons for denial.
- 3.2.3 The applicant shall pay at the time of application a fee in the following amount: Three Thousand Five Hundred Dollars (\$3,500) in the case of applications for Right-of-Way Use Licenses where the Licensee's Facilities will occupy, in the aggregate, more than two thousand (2,000) linear feet in the Right-of-Way; or Seven Hundred Dollars (\$700) where the Licensee's Facilities will occupy, in the aggregate, two thousand (2,000) or fewer linear feet in the Right-of-Way.
- 3.2.4 The Commissioner shall review the application fees at least every three (3) years and make such increases or decreases, by regulation, as are appropriate based on the applicable costs of the City.
- 3.2.5 An owner of Facilities now occupying the Right-of-Way must file an Application for a Right-of-Way Use License by a date determined by the Commissioner. New users of the Right-of-Way must submit an Application and obtain a Right-of-Way Use License before beginning construction for any Facilities in the Right-of-Way. Applications are available from and shall be filed with the Department of Streets Right-of-Way Unit, Municipal Services Building, Room 940, 15th and J.F. Kennedy Blvd., Philadelphia PA 19102.

3.3 ROW Use Agreement

- 3.3.1 No ROW Use License shall be effective, nor shall the applicant receive any rights, benefits, or privileges pursuant to the license, unless and until the applicant has

executed a Right-of-Way Use Agreement, in substantially the form provided in Appendix B to these Right-of-Way Management Regulations.

- 3.3.2 The ROW Use License and the ROW Use Agreement shall be a single document titled “Right-of-Way Use Agreement and License,” and upon execution by the City and Licensee, shall constitute the Right-of-Way Use License and Right-of-Way Use Agreement required under Section 11-701(2)(a) and Section 11-702, respectively, of the Philadelphia Code, and this Section 3.

4 Insurance

4.1 Coverages

4.1.1 General Requirements

- (a) Each Licensee shall, at its sole cost and expense, procure and maintain in full force and effect, covering risks associated with the construction, installation, placement, operation, maintenance, use, renewal, replacement, relocation, repair or removal of its Licensee Facilities, the types and minimum limits of insurance specified below. All insurance shall be procured from insurers with an A.M. Best rating of A-VIII which are authorized to do business on a direct basis in the Commonwealth of Pennsylvania or are otherwise acceptable to the City. All insurance required herein shall be written on an “occurrence” basis, or if any policy is written on a claims made basis, the retroactive date may not be advanced beyond the Effective Date of the Right-of-Way Use Agreement and License and coverage shall be maintained in full force and effect for two (2) years after termination of such Agreement and License, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the City and Licensee. The certificate of insurance shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled or non-renewed.
- (b) The City of Philadelphia, its officers, and employees shall be named as additional insureds on the General Liability Insurance policy procured by Licensee and on any insurance the Licensee requires of any Person, agent, or employee engaged or employed in, about or upon the work by, at the instance of, or with the approval or consent of the Licensee. The coverage of the City as an additional insured shall be limited to the acts or omissions of the Licensee or such Person, agent, servant, or employee.
- (c) A certificate of insurance shall evidence the coverage afforded the City and its officers and employees, as additional insureds. The certificate of insurance shall state that such coverage will be primary to any coverage available to them and will be noncontributory.

4.1.2 Types and Minimum Limits of Insurance

Each Licensee shall furnish the following types and minimum limits of insurance:

- (a) Workers' compensation and employers' liability insurance
 - (1) Workers' Compensation: To meet Pennsylvania statutory requirements
 - (2) Employers' Liability: \$100,000 each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit Bodily Injury by Disease
- (b) Commercial general liability insurance
 - (1) Limit of liability: The Commercial General Liability Insurance Policy shall have \$2,000,000 limits for Licensees whose Facilities occupy no more than 10,000 linear feet of ROW; \$4,000,000 limits for Licensees whose Facilities occupy no more than 100,000 linear feet of ROW; \$8,000,000 limits for Licensees whose Facilities occupy no more than 1,000,000 linear feet of ROW, and \$10,000,000 limits for Licensees whose Facilities occupy more than 1,000,000 linear feet of ROW.
 - (2) Types of insurance: Applicable dollar limit, as set forth in (1), per occurrence combined single limit for bodily injury (including death) and property damage liability; applicable dollar limit, as set forth in (1), for personal and advertising injury; applicable dollar limit, as set forth in (1), general aggregate; and \$1,000,000 aggregate for products and completed operations
 - (3) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; broad form property damage (including completed operations); and explosion, collapse, underground hazards (XCU)
- (c) Commercial Automobile liability insurance
 - (1) Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability
 - (2) Coverage: Owned, non-owned and hired vehicles

4.1.3 Evidence of Insurance Coverage

Certificates of insurance evidencing the required coverages and additional insureds must specifically reference in the description sections of the certificates by number or date the Right-of-Way Use Agreement and License entered into by Licensee and the City. The original certificate of insurance must be submitted to the City's Risk Manager at the following address:

City of Philadelphia
Finance Department
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-686-1705).

The City reserves the right to inspect on Licensee's site copies of policies of all insurance required under the Right-of-Way Use Agreement and License, or alternatively at the City's option, to require Licensee to demand that its authorized insurance representatives furnish written responses to all inquiries made by the City pertaining to the insurance required under the Agreement at any time upon ten (10) days written notice by the City to such insurance representatives.

4.1.4 Self-Insurance

The Commissioner may accept a plan of self-insurance as a substitute for such insurance, if the Commissioner determines that such self-insurance adequately protects the City and the public. In the event that Licensee desires to self-insure any of the coverages listed above, it shall submit to the Commissioner a certified copy of Licensee's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., state approval of self-insurance for workers compensation and automobile liability or, for self-insurance of general liability, a confirming letter from a corporate Risk Manager or other corporate officer) as may be requested by the Commissioner. In the event such approval is granted, it is understood and agreed that the City, its officers, and employees shall be entitled to receive the same coverages and benefits under Licensee's self-insurance program that they would have received had the insurance requirements been satisfied by an insurance carrier with an A.M. Best rating of A-VIII which is authorized to do business on a direct basis in the Commonwealth of Pennsylvania or which is otherwise acceptable to the City. If Licensee self-insures its workers' compensation and employers' liability coverage, Licensee may, in lieu of the foregoing, furnish to the Commissioner a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made by Licensee to the City pursuant to Section 11-701(2)(d)(.2) of the Philadelphia Code or the Right-of-Way Use Agreement and License entered into by Licensee and the City, or to limit Licensee's liability under such indemnification to the

limits of the policies of insurance (or self-insurance) required to be maintained by Licensee hereunder.

4.1.5 Contractors

Licensee shall require its contractors to procure and maintain, or cause to be procured and maintained, throughout the entire period of construction of the Licensee Facilities, the types of insurance, limits of insurance, and designation of additional insureds which are required of the Licensee by the City of Philadelphia; provided that, with respect to Commercial General Liability Insurance Policies, contractors' limits of liability shall be \$1,000,000 for Licensees whose Facilities occupy no more than 10,000 linear feet of ROW; \$2,000,000 for Licensees whose Facilities occupy no more than 100,000 linear feet of ROW; and \$4,000,000 for Licensees whose Facilities occupy more than 100,000 linear feet of ROW. Alternatively, in the absence of contractor adding the City as an additional insured, Licensee will provide excess coverage under its Commercial General Liability Program in the minimum amount specified in this Section 4.1.5 for contractors' limits of liability, and the City of Philadelphia, its officers, and employees shall be named as additional insureds on such policy. The coverage of the City as an additional insured shall be limited to the acts or omissions of the Licensee or of persons, agents, or employees engaged or employed in, about or upon the work by, at the instance of, or with the approval or consent of the Licensee.

5 Construction Permits

No Person shall construct, install, operate, repair or maintain any Facilities or End-User Device in the Right-of-Way without first obtaining a Construction Permit(s) therefor; provided, however, that, in the event of an Emergency Condition, a Person shall notify the City of Philadelphia Municipal Radio at (215) 686-4514 upon arrival of work crew at the site of the Emergency Condition; and shall apply for a Construction permit within seven (7) calendar days following the day on which the work to correct the Emergency Condition commenced.

Section 2. These Regulations shall be effective immediately.

Approved and adopted by
Department of Streets

XXXXXXXXXXXXXXXXXXXX

APPENDIX A

**FORM OF APPLICATION
FOR
RIGHT-OF-WAY USE LICENSE**



CITY OF PHILADELPHIA DEPARTMENT OF STREETS

APPLICATION FOR RIGHT-OF-WAY USE LICENSE

INSTRUCTIONS

1. Who Must Apply

A Right-of-Way Use License is required by persons and businesses planning to install new facilities in the Right-of-Way, and by persons and businesses that already have Facilities in the Right-of-Way, including those previously authorized by special ordinances of the Philadelphia City Council and/or agreements with the City. Specifically, Section 11-702 of The Philadelphia Code, effective April 20, 2005, requires that any person or business that owns or intends to own cables, conduits, utilities or other "Facilities," as defined below, located in, under or over the public streets, sidewalks, or other public rights-of-way of the City of Philadelphia is required to obtain a Right-of-Way Use License. Exceptions to the License requirement are provided for water and sewer pipes in "Plumber's Ditches," for public pay telephones and similar "End User Devices," and for operators of cable television or open video systems that have a franchise from the City. Newsstand operators are governed by a separate section (Section 9-212) of The Philadelphia Code.

All information requested in the Application must be provided. Applicants should attach additional sheets as necessary. Incomplete responses may result in requests for clarification or additional detail before the Application is considered.

License Applications are reviewed by the Streets Department and Right-of-Way Use Licenses are granted by the Streets Commissioner. The term of the License is ten years, and must be renewed, by filing an Application for renewal, prior to the expiration of the term.

2. Where to Obtain Applications

Applications are available from the Streets Department Right-of-Way Unit, Municipal Services Building, Room 940, 15th and John F. Kennedy Blvd., Philadelphia PA 19102; tel. 215-686-5621.

3. Definitions

Section 11-701 of The Philadelphia Code defines “Facilities,” “Plumber’s Ditch” and “End User Device” as follows:

Facilities: “Conduit, pipes, cables, wires, lines, towers, optic fiber, antennae, poles, associated equipment and appurtenances, and any other facilities (exclusive of water and sewer pipes in Plumber’s Ditches and End User Devices) located in the Right-of-Way and designed, constructed, and/or used, by Telecommunications Providers, Cable Service and OVS Service providers, Information Service Providers, Public Utilities, or other Persons for transmitting, transporting, or distributing communications, telecommunications, electricity, natural gas or manufactured gas, oil, gasoline, steam, water, waste water, or any other form of energy, signal or substance.”
Section 11-702(1)(p)

End User Device: “Any device erected in and affixed permanently to the Right-of-Way, including, but not limited to, public pay telephones, that permits end-users to terminate or originate transmissions of voice or data.” Section 11-702(1)(o)

Plumber’s Ditch: “A trench or other excavation made in the Right-of-Way for the purpose of maintaining, repairing, or replacing a water or sewer pipe used to connect a building or other structure with a water or sewer pipe located in the Right-of-Way in order to provide water or sewer service to the building or structure.” Section 11-702(1)(bb)

4. Time and Place to File

Owners of Facilities now occupying the Right-of-Way must file an Application for a Right-of-Way Use License by a date determined by the Streets Commissioner. New users of the Right-of-Way must submit an Application and obtain a Right-of-Way Use License before beginning construction for any Facilities in the Right-of-Way. Applications must be filed with the Streets Department Right-of-Way Unit, Municipal Services Building, Room 940, 15th and J.F. Kennedy Blvd., Philadelphia, PA 19102; tel. 215-686-5621.

5. Application Fee.

The Application Fee for the Right-of-Way Use License is \$3,500 for persons or businesses whose existing or planned Facilities occupy more than 2,000 linear feet of the Right-of-Way, and \$700 for owners whose existing or planned Facilities occupy 2,000 linear feet or less of the Right-of-Way. The Application must be accompanied by a check in the appropriate amount made payable to City of Philadelphia.

6. Obligation to Pay Permit and Other Fees

Recipients of a Right-of-Way Use License are obligated to pay all fees required under Section 11-706 of The Philadelphia Code and Section 2, *Right-of-Way User Fees*, of the Regulations of the Streets Department titled “Right-of-Way Management,” as well as the fees required for filing this Application.

RIGHT-OF-WAY USE APPLICATION

1. Name of Applicant (full legal name): _____

2. Applicant's business is organized as:
- Corporation
 - Limited Liability Corporation (LLC)
 - Partnership
 - Limited Liability Partnership (LLP)
 - Individual Proprietor
 - Other: _____

If organized as a Partnership or Limited Liability Partnership, state the legal names and business addresses of the partners and identify the general partner: _____

3. State of organization: _____

4. Principal Business Address: _____

5. Philadelphia Business Address (if different): _____

6. Contact Person: _____

- Telephone: _____
- Fax: _____
- Email address: _____

7. Federal Tax Identification Number: _____

8. City of Philadelphia Business Privilege License Number: _____

9. City of Philadelphia Tax Account Number: _____

10. Applicant's Business (check all that apply):

- electric power
- natural gas
- telecommunications
- water
- steam
- transportation
- educational institution
- hospital
- office, commercial or residential building owner
- other: _____

11. Facilities for which ROW Use License is sought (check all that apply):

- conduit
- wires or cable
 - underground
 - aerial
- manholes
- handholes
- poles
- equipment cabinets
- pipes
 - natural gas
 - steam
 - water
 - sewer
 - oil
 - gasoline
- towers/antennas/appurtenances
- infrared, RF or optical transmission equipment
- other: _____

12. Linear feet of Applicant's Underground Facilities installed in the Right-of-Way as of Application date: _____

Describe briefly how the above answer was determined, including the records that are available to document and confirm the accuracy of the answer(s). Attach a separate sheet if necessary. _____

13. If Applicant has no current Facilities in the Philadelphia Right-of-Way, state the linear feet of Applicant's planned Facilities in the Philadelphia Right-of-Way:

- Planned Aerial Facilities: _____
- Planned Underground Facilities: _____

14. If Applicant owns or plans to install facilities that will, in total, occupy less than 2000 linear feet of the Philadelphia Right-of-Way, please attach a route map.

15. If Applicant has owned Facilities in the Philadelphia Right-of-Way for less than five years, list the ten largest population cities or counties in which Applicant owns Facilities.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

16. Has Applicant received, within the last five (5) years, a notice of violation of any law, regulation or agreement relating to Applicant's Facilities in the public rights-of-way, in Philadelphia or in any other jurisdiction, that resulted in a fine, penalty, or other enforcement action? Yes No

If yes, please attach a separate sheet providing the following information for each alleged violation: the nature of the violation alleged, the jurisdiction and/or agency that issued the notice, the date of the notice and the dates on which the violation(s) allegedly occurred, and the resolution. If the notice was followed by litigation concerning the alleged violation, state the outcome of the litigation and identify the case by caption, court, and docket number.

17. State whether facilities Applicant currently owns and/or operates in the right-of-way in Philadelphia are authorized by special ordinance(s) of City Council and/or right-of-way use agreements with the City,

- Ordinance of City Council: Yes No
Right-of-Way Use Agreement: Yes No

If yes, list each ordinance and agreement below, including the bill or agreement number and date. Attach a separate sheet of paper if necessary.

- Ordinances:
 - Bill No. _____; date signed by the Mayor _____
 - Bill No. _____; date signed by the Mayor _____
 - Bill No. _____; date signed by the Mayor _____

- Agreements:
 - Number _____; dated _____
 - Number _____; dated _____
 - Number _____; dated _____

18. Has the Applicant been granted a Certificate of Public Convenience by the Pennsylvania Public Utility Commission? Yes No

If yes, in what category or categories is Applicant certified?

- electric power
- telecommunications
 - interexchange resellers
 - competitive local exchange carrier – facilities based
 - competitive local exchange carrier – reseller
 - incumbent local exchange carrier
 - access charge provider
 - competitive access provider
 - other: _____
- transportation/safety
- natural gas
- water
- other: _____

19. Is the Applicant regulated by federal or state regulatory bodies other than the Pennsylvania Public Utility Commission? Yes No

20. If yes, which ones, and with respect to what activities?

APPENDIX B

**FORM OF RIGHT-OF-WAY USE
AGREEMENT AND LICENSE**



RIGHT-OF-WAY USE AGREEMENT AND LICENSE

THIS RIGHT OF WAY USE AGREEMENT AND LICENSE (the “Agreement and License”), is made effective as of this _____ day of _____, ____ (the “Effective Date”), by and between THE CITY OF PHILADELPHIA (the “City”) and _____, a **[state of organization] [corporation, partnership, limited liability company, etc.]** registered to do business in Pennsylvania (“_____” or “Licensee”);

BACKGROUND

A. Pursuant to Chapter 11-700 of The Philadelphia Code (“Chapter 11-700”) and the Regulations of the Streets Department (the “Regulations”), **[name of Licensee]** submitted an application to the Commissioner of the City of Philadelphia Streets Department (the “Commissioner”) for a Right-of-Way Use License authorizing it to own, construct, operate, maintain, and/or repair **[insert category(ies) of Facilities specified in ROW Use License Application]** and associated appurtenances (collectively, the “Licensee Facilities”) in the Right-of-Way of the City of Philadelphia.

B. Licensee represents and warrants that it has been granted all certificates, certifications, approvals, and other authorizations of the Pennsylvania Public Utility Commission, Federal Communications Commission, and other state and federal regulatory bodies with appropriate jurisdiction that are required for Licensee to own, construct, operate, maintain, or repair the Licensee Facilities in the Right-of-Way and to furnish the services Licensee provides by means of the Licensee Facilities.

C. Pursuant to Chapter 11-700, no ROW Use License shall be effective, nor shall the ROW Use License applicant receive any rights, benefits, or privileges pursuant thereto, unless and until the applicant has executed a Right-of-Way Use Agreement in form and content established by regulation.

D. The Commissioner has reviewed and approved the Licensee’s ROW Use License application and by entering into this Agreement and License, hereby issues a ROW Use License to Licensee, on the terms and conditions provided herein and subject to Chapters 9- 300, 11-200, and 11-700 of The Philadelphia Code and the Regulations. This Agreement and License constitutes the ROW Use License and the ROW Use Agreement required under Chapter 11-700.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged by both parties, and intending to be legally bound hereby, it is mutually covenanted and agreed by and between Licensee and the City as follows:

1. **Background Incorporated.** The Background, Sections A-D, is incorporated in and made a part of this Agreement and License.
2. **Definitions.** Capitalized terms shall have the meanings provided in this Agreement and License, or, if not otherwise defined herein, shall have the meanings provided in Section 11-701(1) of The Philadelphia Code.
3. **License.** Upon the execution of this Agreement and License by the City and Licensee, Licensee is authorized to own, construct, operate, maintain and/or repair the Licensee Facilities in the Right-of-Way in, on, over, along, above and/or under the Right-of-Way in the City of Philadelphia; provided, that such authorization shall not include Facilities used to provide Cable Service or OVS Service, for which a Franchise is required as provided in Section 11-703(1) of The Philadelphia Code. Upon execution by the City and Licensee, this Agreement and License shall constitute the Right-of-Way Use License and Right-of-Way Use Agreement required under Section 11-701(2)(a) and Section 11-702, respectively, of the Philadelphia Code.
4. **Term and Renewal.** This Agreement and License and the authorization it provides shall be effective as of the Effective Date and unless sooner terminated in accordance with Chapter 11-700 of The Philadelphia Code, shall expire ten (10) years following the Effective Date. Renewal shall be as provided in Section 11-704 of The Philadelphia Code.
5. **Approvals and Permits Required; Licensee Obligations.**
 - a. Licensee shall not construct, install, operate, repair or maintain any Facilities in the Right-of-Way without first obtaining all certificates, certifications, approvals, and other authorizations of the Pennsylvania Public Utility Commission, Federal Communications Commission, and other state and federal regulatory bodies with appropriate jurisdiction that are required for Licensee to own, construct, operate and maintain the Licensee Facilities in the Right-of-Way and to furnish the services Licensee provides by means of the Licensee Facilities. If, at any time during the term hereof, Licensee does not have or ceases to have such federal or state authorizations, with the effect that Licensee is not authorized by all such federal or state regulatory bodies to operate the Licensee Facilities, or to provide one or more of the services for which it uses the Licensee Facilities, then this Agreement and License, and the authorizations it provides, shall be null and void. Except where provided otherwise under applicable law or regulation or a written contract between Licensee and the City, Licensee, and not the City, shall be responsible for securing all such state and federal authorizations, and may be required by the Commissioner to provide proof thereof as a condition of issuing a Construction Permit. Nothing in this Section 5(a) is intended to negate, supersede, or adversely affect any obligation a third party may have to secure such authorizations under an agreement or other arrangement between the Licensee and the third party or under applicable law and regulation.

b. Except in the event of an Emergency Condition, Licensee shall not construct, install, operate, repair or maintain any Facilities in the Right-of-Way without first obtaining Construction Permits in accordance with Section 11-705 of The Philadelphia Code, nor shall anything in Chapters 9-300, 11-200, and 11-700 of The Philadelphia Code, the Regulations, or this Agreement and License be construed to authorize Licensee to perform any such activities without first obtaining a Construction Permit(s) in accordance with Section 11-705 of The Philadelphia Code. Except in the event of an Emergency Condition, no Licensee may construct or install Licensee Facilities at any particular location except as provided in a Construction Permit issued by the Commissioner. In the event of an Emergency Condition, Licensee shall notify the City of Philadelphia Municipal Radio at (215) 686-4514 upon arrival of work crew at the site of the Emergency Condition; and shall apply for a Construction permit within seven (7) calendar days following the day on which the work to correct the Emergency Condition commenced. Issuance of a Construction Permit shall be subject to the approvals and permissions of appropriate departments, agencies, boards and commissions of the City, as required by law. The Streets Department will be responsible for referring applications for Construction Permits to the appropriate City agencies for their review and approval; Licensees will not be required to make separate application to such agencies.

c. No City department, agency, board or commission shall be required solely by virtue of this Agreement and License or the authorization it provides to issue any permit, license or approval (other than this Agreement and License) which the Licensee must by law obtain prior to the construction of Facilities in the Right-of-Way.

d. Licensee shall construct, install, operate, repair and maintain its Licensee Facilities in accordance with Chapters 9-300, 11-200, and 11-700 of The Philadelphia Code, the Regulations, the terms and conditions of this Agreement and License, the Construction Permit(s) issued by the Commissioner for the Facilities, and applicable law and regulation, and shall pay all fees required by The Philadelphia Code.

e. Licensee and the Streets Department shall belong to the Pennsylvania One Call System as provided in the Act of December 10, 1974, P.L. 852, No. 287, as amended, 73 P.S. §§ 176 *et seq.*, and shall comply with its requirements.

f. Except where provided otherwise under applicable law or regulation, or a written contract between Licensee and the City, Licensee shall be responsible for the costs to construct, install, operate, repair and maintain its Licensee Facilities. Nothing in this Section 5(f) is intended to negate, supersede, or adversely affect any responsibility a third party may have for such costs under an agreement or other arrangement between the Licensee and the third party or under applicable law and regulation.

6. **Default.** In the event Licensee breaches any of the terms and conditions of this Agreement and License, Chapters 9-300, 11-200, or 11-700 of The Philadelphia Code, or the Regulations, and the Commissioner makes a final determination of default in accordance with the procedure provided in Section 11-707(1)(b) of The Philadelphia Code, then the Commissioner may exercise any one or more of the remedies set forth in Sections 11-707(1)(a) and (c) of The Philadelphia Code.

7. **Indemnification.**

a. Licensee shall fully indemnify and save harmless and, if requested, defend the City, its officers, agents and employees, of and from liability for damages or injury to the Right-of-Way or to Persons or property in a claim or suit seeking to impose liability on the City, its officers, agents or employees, arising out of an act or omission of a Person, agent, or employee engaged or employed in, about or upon the work by, at the instance of, or with the approval or consent of the Licensee, including, but not limited to, a failure of the Licensee or such Person, agent, or employee to comply with Chapter 11-700, Chapter 9-300, or Chapter 11-200 of The Philadelphia Code, or any Construction Permit. The Licensee shall have the City named as an additional insured on the insurance required under Section 11-701(2)(d)(.1) of The Philadelphia Code and Section 4, *Insurance*, of the Regulations, and any insurance the Licensee requires of such Person, agent, or employee as provided in Section 4, *Insurance*, of the Regulations. The coverage of the City as an additional insured shall be limited to the acts or omissions of the Licensee or such Person, agent, or employee.

b. The foregoing indemnification shall not apply to any liability to the extent it is caused by the negligent or willful acts of the City, its officers, agents or employees; shall be solely for the benefit of the City, its officers, agents or employees; and is not intended to create any rights in any other Licensee or Person.

c. Nothing contained in this Section 7 shall be construed as a waiver of those defenses, immunities, and limitations on damages available to the City pursuant to the Pennsylvania Political Subdivision Tort Claims Act, Act of October 5, 1980, P.L. 693, No. 142, (42 Pa. C.S. §8541 *et seq.*).

8. **Insurance.** Licensee shall furnish insurance in accordance with Section 4, *Insurance*, of the Regulations.

9. **Security.** The Commissioner may require Licensee to furnish security, in the form of a surety bond or an unconditional letter of credit where the Commissioner determines that additional security is necessary. If required by the Commissioner, the Licensee shall furnish such security, as a condition of any Construction Permit and prior to commencing any work in the ROW, in an amount sufficient to ensure completion of the work in accordance with Chapter 11-700 and Chapters 9-300 and 11-200 of The Philadelphia Code, the Regulations, this Agreement and License, and Construction Permit(s) issued to or applied for by Licensee; and shall maintain the security as long as it is performing any work in the ROW.

10. **Transfer of License.** No assignment or transfer of this Agreement and License, or any authorization, rights or interests granted under this Agreement and License, Chapter 11-700, 9-300 or 11-200 of The Philadelphia Code, the Regulations or any ROW Use Authorization may take place, and no such authorization, rights or interests shall inure to the benefit of Licensee's successors and assigns, unless and until the approval(s) and/or consent(s) required under Section 11-704(2) of The Philadelphia Code are obtained. The Commissioner, in granting consent, shall consider whether the Transfer of Interest is consistent with the terms and requirements of the

Licensee's ROW Use Agreement and License and applicable law and regulation, and meets the standards provided in subsection 11-701(2)(b) of The Philadelphia Code.

11. **Miscellaneous Provisions.**

a. Licensee agrees that, subject to Section 10, *Transfer of License*, this Agreement and License, and all the covenants contained herein shall extend to and bind Licensee, its heirs, administrators, executors, successors and assigns, and any future owner or owners of its Licensee Facilities.

b. **Notices.** All notices or other communications required or permitted under this Agreement and License shall be deemed to have been fully given when made in writing and delivered in person, by confirmed facsimile or overnight courier, or deposited in the United States mail, postage prepaid, and addressed as follows:

To Licensee:

[Name of Licensee]

Attention: _____

Phone: _____

Fax: _____

To City (one copy to each address):

City of Philadelphia Department of Streets
9th Floor, Municipal Services Building
Philadelphia, PA 19102
Attn: Right-of-Way Manager
Fax: (215) 686-5064
And to:

City of Philadelphia Law Department
One Parkway, 17th Floor
1515 Arch Street
Philadelphia, PA 19102-1595
Attn: City Solicitor
Fax: (215) 683-5069

The addresses to which notices may be given by either party may be changed upon written notice given to the other party pursuant to this Section 11(b).

c. **Reservation of Rights.** The City and Licensee have entered into this Agreement and License under the federal and state laws and regulations in effect on the Effective Date. Each

reserves the right to assert such rights and powers with respect to the other as it may in future have as a result of changes in applicable federal and state law and/or regulations, notwithstanding the terms and conditions of this Agreement and License.

d. Severability and Partial Invalidity. The provisions of this Agreement and License shall be severable. If any provision hereof, or its application, is for any reason or circumstance to any extent held to be invalid or unenforceable, the remaining provisions shall not be affected or impaired thereby, and each provision shall be valid and enforceable to the fullest extent permitted by law.

e. Entire Agreement. This Agreement and License sets forth the entire understanding between Licensee and the City with regard to the rights, interests and/or authorizations granted to Licensee hereunder in connection with the Licensee Facilities. No alterations, amendments or additions to this Agreement and License shall be binding upon either party unless set forth in writing and signed by both parties. Licensee and the City acknowledge, however, that in or about January, 2005, the City and certain Licensees entered into a Memorandum of Understanding with respect to the City's right-of-way management ordinance introduced in City Council on February 3, 2005 (the "MOU"), and that the understandings set forth in the MOU are not subject to this Section 11(e).

f. Governing Law; Forum. This Agreement and License shall be governed as to its effect and interpretation by the laws of the United States and the Commonwealth of Pennsylvania. Except as required otherwise under federal or state law, Licensee and the City agree that any lawsuit, action, claim, or legal proceeding between the Licensee and the City involving, directly or indirectly, any matter arising out of or related to this Agreement and License shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania, the Court of Common Pleas of Philadelphia County, the Philadelphia Municipal Court, or the Commonwealth Court of Pennsylvania.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the City of Philadelphia, acting through its Street Commissioner, and [name of Licensee], have executed this Agreement and License as of the Effective Date.

THE CITY OF PHILADELPHIA

By: _____
Commissioner, Streets Department

Approved as to Form

Senior Attorney

[NAME OF LICENSEE]

By: _____
President or Vice President

CORPORATE SEAL:

Attest: _____
Secretary or Treasurer