

Amended

6/1/2009

REGULATIONS OF THE DEPARTMENT OF STREETS

CITY OF PHILADELPHIA

RIGHT-OF-WAY MANAGEMENT

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) "Assessment Date" means July 31 of each Fiscal Year.
- (3) "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.
- (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) "Committee of Highway Supervisors" means the advisory committee to the Commissioner provided in Section 11-705(5) of The Philadelphia Code.
- (6) "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.
- (7) "FY 2006" or "Fiscal Year 2006" means the fiscal year of the City beginning July 1, 2005 and ending June 30, 2006.
- (8) "FY 2007" or "Fiscal Year 2007" means the fiscal year of the City beginning July 1, 2006 and ending June 30, 2007.
- (9) "FY 2008" or "Fiscal Year 2008" means the fiscal year of the City beginning July 1, 2007 and ending June 30, 2008.
- (10) "Ongoing Management Costs" means the costs described in subsection 2.1.1(5)(b).
- (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 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 \$480,000 for Fiscal Year 2006; shall increase by five (5) per cent for Fiscal Year 2007, to a total of \$504,000; and shall again increase by five (5) per cent for Fiscal Year 2008, to a total of \$529,200.
- (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) During the first two (2) years following the first Assessment Date, the Annual Fee shall be assessed for each calendar quarter and paid within forty-five (45) days of receiving the City's invoice; thereafter it 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 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 \$380,000, \$399,000, and \$418,950 for Fiscal Years 2006, 2007, and 2008, 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 \$100,000, \$105,000 and \$110,250 for Fiscal Years 2006, 2007, and 2008, respectively (which amounts include the five (5) per cent increases provided in subsection 2.1.1(2)).
- (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 and the Street Degradation Allocation 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 that Fiscal Year (or in the case of FY 06 only, the average number of linear feet per year for which the Licensee received permits in the preceding five (5) Fiscal Years, expressed as a percentage of the total average number of linear feet for which all Licensees received street opening permits in the preceding five (5) Fiscal Years). 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.

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. (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 For Street excavation occurring in the first and second years following the resurfacing or reconstruction of a Street, the Street Degradation Fee shall be \$3.81 per square foot of Street surface excavated. For Street excavation occurring in the third through fifteenth years following the resurfacing or reconstruction of a Street, the Street Degradation Fee shall be \$1.00 per square foot of Street surface excavated. No Street Degradation Fee shall be charged for construction in Streets that have not been resurfaced or reconstructed for more than fifteen (15) 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.

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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 Streets Department 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 Streets Department 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 Streets Department by facsimile and by telephone communication to fax and telephone numbers designated by the Commissioner, within twenty-four (24) hours after first learning 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.

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