

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. _____

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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?

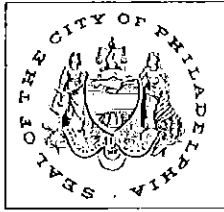
- electric power
- telecommunications
 - interexchange resellers
 - competitive local exchange carrier – facilities based
 - competitive local exchange carrier – reseller
 - incumbent local exchange carrier
 - access charge provider
 - competitive access provider
 - other: _____
- transportation/safety
- 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 Streets Department, by facsimile and by telephone communication to fax and telephone numbers designated by the Commissioner, within twenty-four 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. 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
7th Floor, Municipal Services Building
Philadelphia, PA 19102
Attn: Right-of-Way Manager
Fax: (215) 686-5064

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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