

**CITY OF PHILADELPHIA
REGULATIONS OF THE DEPARTMENT OF STREETS**

RIGHT-OF-WAY MANAGEMENT

Section 1. Authority

The Regulations governing Right-of Way Management ("Regulations") are promulgated pursuant to Section 5-501 of the Home Rule Charter and Title 11 of the Philadelphia Code. These Regulations governing Right of Way Management, effective January 12, 2006, as amended in 2009, 2012 and 2016, are hereby further amended as follows:

Section 2. Definitions

2.1 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.

(1) "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 Section 6.1(2) of these Regulations.

(2) "Americans with Disability Act Ramp Component" or "ADA Ramp Component" means the cost to construct one square foot area of ramp that is fully compliant with ADA standards. This component is calculated by the Department of Streets using the average cost of items associated with constructing an ADA-compliant ramp pursuant to the City's ADA Curb Ramp Program. The ADA Curb Ramp Program is part of the City's Streets Paving Program and is required by federal and state law.

(3) "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.

(4) "Assessment Date" means July 31 of each Fiscal Year.

(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) "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 streets 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 streets paving operations workforce, (2) material costs paid by the City as set by the Pennsylvania Department of Transportation Asphalt Cement Price Index in publication 408, chapter 110.04, and (3) City milling and preparation

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contract bid prices. The Index Component may be adjusted monthly and will be posted on the last Friday of each month on the Department of Streets' website as well as, communicated to all members of the Committee of Highway Supervisors.

(8) "Ongoing Management Costs" means the City's costs in connection with inspection, management, oversight, and enforcement activities related to Licensee's completed construction and existing Facilities located in the ROW (see Section 6.1(5)(b)).

(9) "Paving Component" means the cost to pave one square foot of street surface. The Paving Component is calculated by the Department of Streets using the average cost of materials, equipment and labor to pave one city block based on the age of the street surface at the time a Construction Permit is obtained.

(10) "Permitting Costs" means the City's costs in connection with permitting, inspection, enforcement, management and oversight activities relating to Licensee's new construction in the ROW (see Section 6.1(5)(a)).

(11) "Street Degradation Allocation" means an amount that partially recovers the City's costs in connection with the reduction in the useful life of a Street caused by Licensee's construction in the ROW. (see Section 6.1(5)(c)).

(12) "Street Degradation Allocation Unit Cost Rate" means the per foot cost used to determine "Street Degradation Allocation" (see Section 6.1(7)).

(13) "Street Degradation Fee" means the fee assessed after the issuance of a Construction Permit to partially compensate the City for the reduction in the useful life of a Street caused by construction in the ROW, as set forth in Section 11-706(2) of The Philadelphia Code and Section 6.2 of these Regulations. The Street Degradation Fee is assessed to all users of the ROW including public utilities and governmental agencies.

Section 2. Application for ROW Use License

In accordance with Section 11-701(2) of the Philadelphia Code,

- 2.1 Application for a ROW Use License shall be made on the form provided in Appendix A or, revised by the Streets Department in its sole discretion.
- 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 11-701(2)(b) of

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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.

- 2.3 No fee is currently assessed in connection with an application for a ROW Use License.
- 2.4 The Commissioner shall review decisions regarding application fees for ROW Use License 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.
- 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 or his/her designee. New users of the Right-of-Way must submit an application for, and obtain, a Right-of-Way Use License before beginning construction for any Facilities in a 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 Street & J.F. Kennedy Blvd., Philadelphia PA 19102.

Section 3. Insurance

In accordance with Section 11-701(2)(d) of the Philadelphia Code,

3.1 General Requirements

3.1.1 Coverages

- (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 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 License Agreement 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.

3.1.2 Types and Minimum Limits of Insurance

- (1) Each Licensee shall furnish the following types and minimum limits of insurance:

(a) Workers' Compensation- per Pennsylvania statutory requirements

(b) 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

(c) Commercial General Liability Insurance

(i) 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.

(ii) Types of insurance: Applicable dollar limit, as set forth in (i), per occurrence combined single limit for bodily injury (including death) and property damage liability; applicable dollar limit, as set forth in (i), for personal and advertising injury; applicable dollar limit, as set forth in (i), general aggregate; and \$1,000,000 aggregate for products and completed operations

(iii) 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)

(d) Commercial Automobile Liability Insurance

(i) Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability

(ii) Coverage: Owned, non-owned and hired vehicles

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3.3 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 License Agreement 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 License Agreement, 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.

3.4 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 and 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 License Agreement 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.

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3.5 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 Underground 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 Underground Facilities occupy no more than 10,000 linear feet of ROW; \$2,000,000 for Licensees whose Underground Facilities occupy no more than 100,000 linear feet of ROW; and \$4,000,000 for Licensees whose Underground 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 5.1.5 for contractors' limits of liability, and the City of Philadelphia, its officers, and employees shall be named as additional insureds on such policy.

Section 4. Right-of-Way Use License and Agreement

4.1 License Required. In accordance with Section 11-702 of the Philadelphia Code,

- 4.1.1 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 License Agreement, in substantially the form provided in Appendix B to these Right-of-Way Management Regulations.
- 4.1.2 No Person, other than a Franchisee, may own, construct, operate and/or maintain Facilities in a 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.
- 4.1.3 The ROW Use License is granted pursuant to a fully executed ROW Use License Agreement as required under Section 11-701(2)(a) and Section 11-702, respectively, of the Philadelphia Code, and this Section 4.
- 4.1.4 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 excepting lands specified in Section 11-701(1)(dd) of the Philadelphia Code.
- 4.1.5 Any Right-of-Way Use License shall be authorized and issued by the Commissioner, or his/her designee, and shall not become effective unless or until so authorized and issued. In considering such an authorization, the Commissioner or his/her designee 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.

4.2 Appeals. Decisions of the Commissioner with respect to any application for a Right of Way Use License shall be appealable, within thirty (30) days, to the Board of License and Inspection Review.

Section 5. Construction

5.1 Construction Permits. Pursuant to Section 11-705(1) of the Philadelphia Code,

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); 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 6. Right-of-Way User Fees

6.1 Annual Fee. Pursuant to Section 11-706(1) of the Philadelphia Code,

- (1) Each Licensee shall pay an Annual Fee to compensate the City for its administrative costs incurred in connection with: i) issuing Construction Permit(s) to Licensee for its Underground Facilities located in the ROW; and, ii) reviewing, inspecting, and supervising Licensee's on-going use and occupancy of the ROW for construction, installation, operation and/or maintenance of its Underground Facilities. The Annual Fee also partially compensates the City for the reduction in the useful life of a Street caused by Licensee's construction in the ROW.
- (2) The Aggregate Annual Fee to be paid by all Licensees shall equal to a total of \$1,142,524 for Fiscal Year 2018 and shall increase by one (1) percent for Fiscal Year 2019 to a total of \$1,153,950, and shall again increase by one (1) percent for Fiscal Year 2020 to a total of \$1,165,489.
- (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 6.1(2).
- (4) The Annual Fee shall be assessed each year, and paid within forty-five (45) days of receipt of City's invoice.

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(5) The Annual Fee is comprised of the following three (3) components to recover the City's costs of managing the ROW:

- (a) Permitting Costs (see Section 2.1 (10))
- (b) On-going Management Costs (see Section 2.1 (8))
- (c) Street Degradation Allocation (see Section 2.1 (11))

The Street Degradation Allocation shall be assessed annually according to Licensee's permitted activity during the prior Fiscal Year. The assessment rate is determined by the Street Degradation Allocation Unit Cost Rate (see Section 2.1 (12)). The Street Degradation Fee is a separate fee and is not a component of the Annual Fee.

(6) The total amount of the Aggregate Annual Fee allocated to Permitting Costs and On-going Management Costs together shall be \$916,662, \$925,829, and \$935,087 for Fiscal Years 2018, 2019, and 2020 respectively (these amounts incorporate the one (1) percent increases provided in Section 6.1(2)). The dollar amount of the Permitting Costs component and the dollar amount of the On-going 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 On-going Management Costs.
- (b) The percentage of Permitting Costs will be multiplied by the amount of the Aggregate Annual Fee applicable to the then current Fiscal Year to determine the dollar amount of Permitting Costs to be allocated among Licensees.
- (c) The percentage of On-going Management Costs will be multiplied by the amount of the Aggregate Annual Fee applicable to the then current Fiscal Year to determine the dollar amount of On-going Management Costs to be allocated among Licensees.

(7) The Street Degradation Allocation shall be \$225,862, \$228,121 and \$230,402 for Fiscal Years 2018, 2019, and 2020 respectively (which amounts incorporate the one (1) percent increases provided in Section 6.1(2)). The Street Degradation Allocation Unit Cost Rate is the Street Degradation Allocation divided by the total number of linear feet issued in Construction Permits to all Licensees in the Fiscal Year preceding the Assessment Date. For Fiscal Year 2018, the Street Degradation Allocation Unit Cost Rate shall be \$4.36 per linear foot and for subsequent Fiscal Years shall be calculated near the start of each such Fiscal Year and communicated to all Licensees.

(8) Each Licensee that is not a Franchisee shall pay its allocated share of Permitting Costs, On-going Management Costs, and Street Degradation Allocation. The total Annual Fee assessed to each Licensee shall be the sum of such shares. A Licensee that is a Franchisee is deemed to pay its allocated share of On-going Management Costs and Street Degradation Allocation as part of any franchise fee it pays to the City pursuant to its Franchise Agreement, and shall receive a credit for the components of the Annual Fee up to the amount of franchise fees

paid for the Fiscal Year. However, a Franchisee shall pay its allocated share of Permitting Costs as an Annual Fee separate from, and in addition to, any franchise fees it pays to the City.

- (9) Each Licensee's allocated share of Permitting Costs shall be based on the total number of linear feet for which the Licensee received Construction 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 Construction Permits in the previous Fiscal Year.
- (10) Each Licensee's allocated share of On-going Management Costs shall be based on the total number of linear feet of the Licensee's Underground 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 Underground Facilities installed in the ROW by all Licensees in the prior Fiscal Year.
- (11) 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 Construction Permits in the prior Fiscal Year.

6.1.1 Method of Determining Annual Fee

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

6.2 Street Degradation Fee. In accordance with Section 11-706(2) of The Philadelphia Code,

6.2.1 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 a Street caused by applicant's construction in the ROW. The Street Degradation Fee is comprised of the following components:

- (a) Index Component (see Section 2.1 (7))
- (b) Paving Component (see Section 2.1 (9))
- (c) ADA Ramp Component (see Section 2.1 (2))

6.2.2 Calculation of Street Degradation Fee

- (1) For street excavation occurring less than two (2) years following the resurfacing or reconstruction of a Street, the Street Degradation Fee shall be \$7.23 per square foot of street surface excavated (of which \$0.00 is the ADA Ramp Component and \$7.23 is the Paving Component), as adjusted by the Index Component.
- (2) For street excavation occurring at least two (2) years but less than five (5) years following the resurfacing or reconstruction of a Street, the Street Degradation Fee shall be \$5.93

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per square foot of street surface excavated (of which \$0.00 is the ADA Ramp Component and \$5.93 is the Paving Component), as adjusted by the Index Component.

(3) For street excavation occurring at least five (5) years but less than fifteen (15) years following the resurfacing or reconstruction of a Street, the Street Degradation Fee shall be \$2.33 per square foot of street surface excavated (of which \$0.00 is the ADA Ramp Component and \$2.33 is the Paving Component), as adjusted by the Index Component.

(4) No Street Degradation Fee shall be charged for construction in a Street that has not been resurfaced or reconstructed for more than fifteen (15) years.

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

6.2.4 Consistent with Section 6.1(8) of these Regulations, no Street Degradation Fee shall be owed by a Franchisee whose compensation to the City required under its Franchise Agreement exceeds its fees due under this Section 6.2.

6.3 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 or commensurate with the City's costs in connection with issuing Construction Permits for Underground Facilities and reviewing, inspecting and supervising City Agency's on-going use and occupancy of the Right-of-Way for construction, operation and/or maintenance of its Underground Facilities; except that the Departments of Streets and Public Property shall not be required to pay a fee that compensates these Departments for their own costs of managing the Rights-of-Way.

6.4 Petitions for Reconsideration

6.4.1 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 linear feet permitted or constructed during that year, may petition the Commission for reconsideration.

6.4.2 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.

6.4.3 Petitions must include documentation sufficient to demonstrate that the allocation is incorrect, including information that challenges the linear feet of installed or permitted Underground Facilities that City attributes to Licensee; as-built plans; Underground Facilities

audit findings, and/or other information sufficient to demonstrate the number of linear feet claimed by the Licensee.

6.5 Review and Recalculation of ROW User Fees

Pursuant to Section 11-706(1)(d) and 11-706(2) of The Philadelphia Code, no more frequently than every three (3) years and 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 in connection with the activities described in Section 11-706(1)(a) of The Philadelphia Code and Street degradation caused by construction in the ROW by Licensees.

Section 7. Full Force and Effect

This Regulation is not intended to repeal or modify any portion of the Regulations of the Department of Streets for ROW Management except as provided herein. All remaining Regulations under Chapter 11-700 remain in full force and effect.

Section 8. Effective Date

These Regulations shall be effective immediately.

Approved and adopted by Department of Streets

Carlton Williams
Commissioner, Department of Streets

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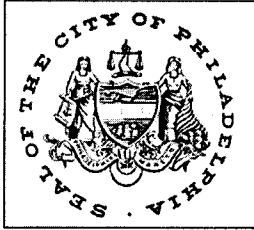
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APPENDIX A

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

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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 operates, 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.

2. 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 11-701(1)(p) of The Philadelphia Code.

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End User Device: "Any device erected in and affixed permanently to the Right-of-Way, including, but not limited to, public pay telephones that allow end-users to originate or terminate transmissions of voice or data." Section 11-701(1)(o) of The Philadelphia Code.

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 11-701(1)(bb) of The Philadelphia Code.

3. 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.

All information requested in the Application for Right-of-Way Use License ("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.

4. Time and Place to File

Owners of Facilities currently 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.

Applications are reviewed by the Streets Department and Right-of-Way Use Licenses are granted by the Commissioner. The term of the License is ten (10) years, and must be renewed, by filing an Application for renewal prior to the expiration of the term.

5. Application Fee

No fee shall be charged for filing an Application.

6. Obligation to Pay Permit and Other Fees

Recipients of a Right-of-Way Use License are obligated to pay all permit fees required under Section 11-700 of The Philadelphia Code and Section 3, *Right-of-Way User Fees*, of the Regulations of the Streets Department entitled "Right-of-Way Management," as well as, other fees related to Licensee's use of the public Rights-of-Way.

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APPLICATION FOR RIGHT-OF-WAY USE

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: _____

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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
- ☐ wireless communication antenna facilities: _____
- ☐ 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 (5) years, list the ten (10) 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 a 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 Applicant currently owns and/or operates Facilities in the Right-of-Way that are authorized by special ordinance(s) of City Council and/or Right-of-Way Use Agreement 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 No. 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 _____

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☐ 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: _____

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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?

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RIGHT-OF-WAY USE LICENSE AGREEMENT

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

BACKGROUND

- A. Licensee submitted, to the Streets Department, an application for a Right-of-Way Use License ("Application") requesting permission to own, construct, operate, maintain, repair and/or remove **[insert category(ies) of Facilities specified in the ROW Use License Application]** and associated appurtenances (collectively, the "Licensee Facilities") on the public Rights-of-Way of the City of Philadelphia ("ROW Use License").
- B. The Streets Department has reviewed and approved the Licensee's Application and by entering into this Agreement, the City issues Licensee a ROW Use License on the terms and conditions provided herein.

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 agreed to by Licensee and the City as follows:

1. **Background Incorporated.** The Background is incorporated in and made a part of this Agreement and ROW Use License.
2. **Definitions.** Capitalized terms shall have the meanings provided in this Agreement or, if not otherwise defined herein, shall have the meanings provided in Section 11-700 of The Philadelphia Code.
3. **Representations.** Licensee represents and warrants that it has been granted all 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.

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4. **License.**

a. By entering into this Agreement, Licensee acknowledges and agrees that its ROW Use License for Licensee Facilities is subject to the terms and conditions herein and Chapters 11-700, 9-300 and 11-200 of The Philadelphia Code.

b. Licensee is authorized to own, construct, operate, maintain, repair and remove the Licensee Facilities located in the public Rights-of-Way in the City of Philadelphia;

c. The authorization pursuant to this Agreement 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.

5. **Term and Renewal.** This Agreement 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.

6. **Approvals and Licensee Obligations.**

a. Licensee shall not construct, install, operate, repair or maintain any Licensee Facilities in the Right-of-Way without first obtaining all authorizations from applicable federal and state governing bodies required for Licensee to own, construct, operate and maintain Licensee Facilities in the Right-of-Way and to furnish the services Licensee provides by means of the Licensee Facilities. Licensee, at its sole cost, shall be responsible to secure all such state and federal authorizations, and may be required by the Streets Department to provide proof thereof as a condition of issuing a Construction Permit.

b. If, at any time during the term or a renewal, Licensee does not have or ceases to have such federal or state authorizations to operate the Licensee Facilities, or to provide any service(s) for which it uses the Licensee Facilities, then this Agreement, and the authorizations it provides, shall be null and void.

c. Issuance of a Construction Permit is subject to the approvals of appropriate City departments or agencies, as required by law. If necessary, the Streets Department will refer applications for Construction Permits to appropriate City agencies for their review and approval.

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7. **Required Permits**

a. Except as set forth in Section 7.c., Licensee shall not perform any work in the Right-of-Way without first securing required Streets Department permits, and shall not construct, install, operate, repair, maintain and/or remove any Facilities in the Right-of-Way without first obtaining a Construction Permit in accordance with Chapters 11-700, 11-200 and 9-300 of The Philadelphia Code.

b. Licensee shall locate its Licensee Facilities only at the location(s) specified in a Construction Permit.

c. 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.

d. Licensee is responsible for, and shall pay, all permit fees and other fees required under the Philadelphia Code and Regulations in connection with the Licensee Facilities.

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

8. **Licensee Facilities.**

a. Licensee shall, at its sole cost and expense, construct, install, operate, repair, maintain, replace and/or remove the Licensee Facilities in accordance with Chapters 9-300, 11-200, and 11-700 of The Philadelphia Code, the Regulations and this Agreement.

b. Nothing in this Section 8 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.

9. **One Call Requirement.** Licensee and the Streets Department shall belong to the Pennsylvania One Call System as required by law, and shall comply with its requirements.

10. **No Property Rights in Real Estate.** Licensee acknowledges that this Agreement does not create any interest or estate in Licensee's favor in the City's Rights-of-Way. The City retains legal possession of the full boundaries of its Rights-of-Way.

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11. **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.

12. **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) 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.

b. The foregoing indemnification shall not apply to any liability to the extent it is caused by the sole negligence 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 12 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. 14 (4 Pa. C.S. §8541 *et seq.*).

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

14. **Security.** The Commissioner or his/her designee, may require Licensee to furnish security, in the form of a surety bond or a letter of credit where the Commissioner or his/her designee determines that additional security is necessary. If required by the City, the Licensee shall furnish such security, as a condition of any Construction Permit and prior to commencing any work in the Right-of-Way in an amount sufficient to ensure completion of the work in accordance with Chapters 11-700, 9-300 and 11-200 of The Philadelphia Code, the Regulations,

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this Agreement and any Construction Permit(s) issued to or applied for by Licensee. Licensee shall maintain the security as long as it is performing any work in the Right-of-Way.

15. **Survival.** Licensee agrees that all the covenants herein contained shall be deemed in full force and effect as long as the Licensee Facilities constructed pursuant to this Agreement exist. Liability under this Agreement shall terminate only when the Licensee Facilities that are constructed pursuant to this Agreement are removed and the footways and public Rights-of-Way are restored to the satisfaction and approval of the Streets Department and the Law Department of Philadelphia.

16. **Notices.** All notices or other communications required or permitted under this Agreement 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: _____

Email: _____

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

And to:

City of Philadelphia Law Department
One Parkway, 16th Floor
1515 Arch Street
Philadelphia, PA 19102-1595
Attn: Chief Deputy City Solicitor, Regulatory Affairs Unit

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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 16.

17. **Transfer of License.**

a. Licensee agrees that subject to subsection 17.b. of this Agreement, 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 the Licensee Facilities.

b. No assignment or transfer of this Agreement, or any authorization, rights or interests granted under this Agreement, Chapters 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, or his/her designee, in granting consent, shall consider whether the Transfer of Interest is consistent with the terms and requirements of the Licensee's ROW Use License Agreement and applicable law and regulation, and meets the standards provided in subsection 11-701(2)(b) of The Philadelphia Code.

18. **Miscellaneous Provisions.**

a. **Reservation of Rights.** The City and Licensee have entered into this Agreement 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.

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

c. **Entire Agreement.** This Agreement 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 shall be binding upon either party unless set forth in writing and signed by both parties.

d. **Governing Law; Forum.** This Agreement 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

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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 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.

[END OF TEXT; SIGNATURES TO FOLLOW]

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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 as of the Effective Date.

THE CITY OF PHILADELPHIA

Approved as to Form

By: _____
Commissioner, Streets Department

Deputy City Attorney

[NAME OF LICENSEE]

By: _____
President or Vice President

CORPORATE SEAL:

Attest: _____
Secretary or Treasurer

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