

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 in whole or in part held to be invalid or unenforceable, the remaining provisions shall not be affected 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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la wsuit, 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

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CORPORATE SEAL:

Attest: _____
Secretary or Treasurer

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