

Article V — Obligations of Permittees

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§ 59-501 Insurance.

Each Permittee shall at all times maintain, and require its contractors and subcontractors to maintain, insurance with a reputable insurance company authorized to do business in the Com-

monwealth of Pennsylvania and which has an A.M. Best rating (or equivalent) no less than “A” indemnifying the Borough from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance, or removal of Permittee’s system or facilities in the right-of-way. The amounts of such coverage shall be as determined from time to time by regulation issued by the Borough Manager. The Borough shall be designated as an additional insured under each of the insurance policies required by this Section. No such insurance shall be cancelled or changed in any material respect unless the Borough is given at least thirty (30) calendar days’ advance notice in writing.

§ 59-502 Indemnification.

Each Permittee shall, at its sole cost and expense, indemnify, defend, and hold harmless the Borough, its elected and appointed officials, employees, and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by, or connected with any act or omission of the Permittee, its officers, agents, employees, or contractors arising out of its use of the right-of-way, including, but not limited to, the construction, installation, operation, maintenance, or removal of Permittee’s system or facilities in the right-of-way. The obligation to indemnify, defend, and hold harmless under this Section shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys’ fees, reasonable expert fees, court costs, and all other costs of indemnification.

§ 59-503 Construction Standards and Security.

(a) All construction, installation, maintenance, repair, replacement, removal, and operation of facilities in the right-of-way shall conform to the requirements of the following publications, as in effect from time to time: Pennsylvania Department of Transportation Publication 408, the National Electrical Code, the National Electrical Safety Code, the Pennsylvania Uniform Construction Code as modified by Chapter 30, and Borough sidewalk and curbing regulations under Chapter 56.

(b) In the construction, installation, maintenance, repair, or replacement of any facilities in the right-of-way, there shall be no interference with the public use of any right-of-way more than is necessary to enable the efficient performance of the work. When necessary, in order not to interfere unduly with the public convenience, the Borough Manager may fix the hours during which such work may be performed. The judgment of the Borough Manager shall be binding in this regard.

(c) Each person performing construction, installation, maintenance, repair, replacement, or removal operations in the right-of-way shall furnish to the Borough, at the person’s expense, a letter of credit or other form of financial security satisfactory to the Borough Solicitor in an amount sufficient to complete the work or restore the right-of-way to its condition before the commencement of the work, as determined by the Borough Engineer. The security shall be a continuing obligation until the completion of the work as confirmed in writing by the Borough.

§ 59-504 Maintenance.

Each Permittee shall insure that adequate measures are used at all times to protect the public health, safety, and welfare as affected by the existence, placement, and maintenance of its facilities in the right-of-way. All of a Permittee's facilities in the right-of-way shall be maintained in a good, safe order and condition and in accordance with generally accepted engineering practices and safety requirements. Any facilities in the right-of-way no longer used by the Permittee shall be promptly removed at the Permittee's expense, and the condition of the right-of-way shall be restored.

§ 59-505 Right to Inspect.

The Borough shall have the right to inspect all of the facilities of the Permittee in the right-of-way, including aerial facilities and underground facilities, and all construction, installation, and maintenance activities of the Permittee in the right-of-way, to ensure health and safety with respect to such facilities, other facilities, activities, the right-of-way, and any other public or private property and to determine compliance with the terms of this Chapter and the Right-of-Way Use Permit. Permittees are required to cooperate with all such inspections and to provide information requested by the Borough as part of the inspection.

§ 59-506 Alteration or Modification of Facilities.

The Permittee shall notify the Borough upon the alteration or modification of any facilities in the right-of-way, and at any time there are any changes in the information provided to the Borough in the permit application process. The Permittee shall update any maps provided under § 59-507 if facilities have been added to or removed from the right-of-way.

§ 59-507 As-Built Maps.

Upon request from the Borough, a Permittee shall provide as-built maps and engineering specifications depicting and certifying the location (in all three dimensions) of all its existing facilities within the right-of-way, including those positioned aerially and underground. Such maps and specifications shall be submitted in such format (including electronic formats) and shall include such information, as required by the Borough from time to time. If the maps are not provided in the required format, the Permittee shall reimburse the Borough for the costs of converting the supplied maps into the required format. The Permittee shall designate the portions of such information which it believes is confidential and exempt from public disclosure under section 708 of the Right to Know Law, 65 PA. STAT. ANN. § 67.708, the Public Utility Confidential Security Information Disclosure Protection Act, 35 PA. STAT. ANN. § 2141.1 *et seq.*, the Public Utility Commission regulations at 52 Pa. Code ch. 102, and/or any other applicable laws or regulations.

§ 59-508 Damages to be Repaired.

(a) If a structure or facility installed or maintained by a Permittee becomes damaged, the Permittee shall promptly have it removed, repaired, or otherwise made safe.

(b) The Permittee is responsible to promptly (within ten (10) calendar days) repair or restore all public or private property damaged by the activities of the Permittee or its contractors or other agents, or by the structures or facilities installed or maintained by or on behalf of the Permittee, including any cartway, curb, sidewalk, or other facilities in the right-of-way, and any property outside of the right-of-way.

§ 59-509 Cutting or Defacing Trees.

No person shall cut, break, or otherwise deface any tree in the right-of-way without first having obtained permission in writing from the Borough Manager.

§ 59-510 Relocation or Removal of Facilities.

Within sixty (60) calendar days following written notice from the Borough, or such longer period as the Borough determines is appropriate, or such shorter period as the Borough determines necessary in the case of an Emergency, a Permittee or Mailbox Permittee shall temporarily or permanently remove, relocate, charge, or alter the position of any facilities within the right-of-way whenever reasonably necessary (in the opinion of the Borough Manager or Council) for the construction, installation, maintenance, or repair of other facilities in the right-of-way, the operations of the Borough or other governmental entity in the right-of-way, a change in the Borough's rights to the right-of-way or the area of the right-of-way, or an Emergency as determined by the Borough.

§ 59-511 Removal of Aerial Facilities.

No person shall cut down or remove any aerial facilities unless all associated underground supports, foundations, and related facilities are also removed and the surface is properly restored.

§ 59-512 Other Permits.

Except in the case of an Emergency, no Permittee or any other person shall perform any work in the right-of-way without first obtaining all other required Borough permits for the work, including, but not limited to, permits for any street excavations and openings and for curbing or sidewalk construction, replacement, or repair.

§ 59-513 Leased Facilities.

Subject to the provisions of this Chapter and with the prior written approval of the Borough, a Permittee shall have the right to furnish any facilities for which it has the applicable authorization to own, construct, use, operate, and/or maintain in the right-of-way to another person for the latter's use in constructing or operating its own facilities in the right-of-way, *provided* that the Permittee shall first deliver to the Borough notice that there is a fully executed lease, rental, or other agreement with the other person pursuant to which the facilities are to be furnished, and the other person shall comply with all the requirements of this Chapter (including requirements for Right-of-Way Use Permits) and other applicable Borough ordinances and requirements.

§ 59-514 Records.

The Borough shall have the right, upon thirty (30) calendar days written notice and during normal business hours, to inspect all documents, records, maps, and other pertinent information maintained by a Permittee that relate directly to the terms and conditions of this Chapter.

§ 59-515 Regulations.

A Permittee is obligated to comply with all written policies and procedures adopted, from time to time, by the Borough Manager consistent with this Chapter as deemed necessary for the implementation of this Chapter.