

16. Such other and further information related to the construction and use of a

16. Such other and further information related to the construction and use of a Facility as may be reasonably required by the Awarding Authority in its form Application.

VI. Application Procedure

Upon receipt of a completed and signed Application, it will be forwarded to the Highway Superintendent, Planning Board and the Inspector of Wires for review. The Highway Superintendent, Planning Board and Inspector of Wires shall promptly review the Application and make written recommendations concerning approval to the Awarding Authority and, if appropriate, shall include recommendations concerning permit conditions and supplemental instructions.

If the Application involves the construction of New Facilities, the modification of Existing Facilities or a program of Attachments the total construction cost of any of the foregoing is estimated to exceed one million dollars, the Town and Applicant may enter into an agreement for the Applicant to reimburse the Town for the reasonable cost of engineering review by the Town's consultant of the plans submitted. In such a case, Applicants shall submit a deposit to secure the cost of this review which will be held in a segregated account in accordance with C. 44 section 53G of the Mass. General Laws.

If the Right-of-Way Application includes a Petition of the Applicant for a Grant of Location, the Awarding Authority shall promptly schedule a public hearing and, if required by statute, publish a public notice of the hearing. Owners of property abutting the property on which the New Facility is proposed will be notified by the Town at least fourteen days prior to the public hearing and given the opportunity to speak at the public hearing and present evidence.

The Awarding Authority shall review the Application, any evidence presented at a Grant of Location public hearing and the recommendations received from the Highway Superintendent, Planning Board and Inspector of Wires and make a prompt determination on the Application taking into account the recommendations received, testimony and evidence presented if any, and such other facts as it may reasonably consider such as:

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A. The likelihood that the New Facility will incommode the public use of public ways or endanger or interrupt navigation. B. The financial and technical ability of the Applicant

or Co-Locator to construct New Facilities or to use the Right-of-Way. C. The capacity of the Right-of-Way and the Existing Facilities thereat to accommodate the proposed New Facilities, modifications or Attachments. D. The capacity of the Right-of-Way and the Existing Facilities thereat to accommodate additional New Facilities if the Permit is granted. E. Potential damage or disruption (including Measurable Interference with Telecommunications Services) to Existing Facilities, or public property if the Permit is granted. F. The effect, if any, on public health, safety and welfare if the Permit is granted. G. The availability of alternate routes and/or locations for the proposed New Facilities. H. Applicable federal and state laws and Town by-laws which might prohibit or affect the Permit if granted.

If the Application is considered favorably, a Right-of-Way Permit containing such conditions and supplemental instructions regarding the location and installation of Facilities as the Awarding Authority reasonably deems appropriate shall promptly be issued upon the satisfaction of any conditions precedent, which the Awarding Authority may establish. If the Application is not favorably considered, the Awarding Authority shall communicate in writing to Applicant or Co-Locator the reasons its Application was not favorably considered.

If a Grant of Location has been requested as part of the Application for a Right-of-Way Permit and the Application has been considered favorably, the Right-of-Way Permit shall also constitute an Order Granting the Location. The Grant of Location will specify where the New Facility or Attachment may be placed, and (with the exception of Grants of Location for Transmission Lines) the kind of Poles, piers or abutments which may be used, the number of wires or cables which may be attached thereto, the height to which the wires or cables may run and the maximum voltage between conductors to be carried through same. Grants of Locations for Poles are limited to one Pole per Location. The Grant of Location may contain such other conditions and supplemental instructions as the Awarding Authority reasonably deems appropriate.

VII. Terms Of The Right-Of-Way Permit

A. Conditions of Permit.

All Right-of-Way Permits granted are conditioned upon 1) the Applicant having obtained and submitted to the Awarding Authority, prior to construction and installation of its New Facilities, a Bond as required in sub-section (K)(2) hereafter, and 2) the execution and delivery of a Town of Canton Right-of-Way License Agreement substantially in the form set forth below and otherwise in form and substance satisfactory to the Awarding Authority. 160

B. Permit Term

Rights-of-Way Permits shall be valid for the period commencing on the date of filing of an Application and ending upon the Revocation of a Right-of-Way Permit. A Permit Holder desiring to continue to use the Facility after the expiration of the Permit Term shall not more than 180 days nor less than 90 days before expiration of the current Permit file an Application with the Town for a Permit as though the Existing Facility were a proposed New Facility. Each Co-Locator must also file for a new Permit.

C. Revocation of Permits.

Except to the extent that a Right-of-Way Permit also constitutes a statutory Grant of Location and current law limits the ability of the Awarding Authority to revoke a Grant of Location, the Awarding Authority during the Permit Term may revoke a Right-of-Way Permit granted hereunder after notice and hearing if it shall reasonably determine that (i) Permit Holder is in Default (ii) Permit Holder fails to construct the Facilities for which a Permit was granted within six months of the granting of the Permit (iii) Permit Holder has failed to relocate its Facility or Attachment to a new location within the designated time following an order from the Awarding Authority to relocate such Facility or Attachment or (iv) if the Awarding Authority" determines that public necessity and convenience requires the revocation of a Grant of Location held by a street railway. The Permit-Holder shall be given not less than ten days prior written notice of the time and place of the hearing on revocation and shall have the opportunity at the public hearing to present evidence.

D. Removal of Facilities.

Following revocation of the Permit or the expiration of the Permit Term without an application to continue to use the Facility unless then existing statutes shall require a different result and, if ordered by the Town, Permit Holder shall cease using the Right-of-Way. Permit Holder shall remove all of its Overhead and Underground Facilities from the Right-of-Way and restore the area to its original condition within six months following expiration or revocation of the Permit. In the event that the Permit Holder fails to remove its Facilities, the Awarding Authority may treat such as abandoned property and, among other remedies, remove the Facilities and restore the area at the owner's sole cost and expense.

E. Removal of Unauthorized Facilities.

The location of any Overhead or Underground Facility covered by a Right-of-Way Permit may be changed by order of the Awarding Authority if it determines in its reasonable discretion that public necessity, the incommoding of the public's use of the public ways or public endangerment or interruption of navigation requires relocation of the Facility. Except for Emergency Repair Work, Applicant is required to notify all

Co-Locators upon receiving an order to relocate the Facility from the 161

Awarding Authority. Applicant and all Co-Locators shall, at their own expense, relocate their Facilities to such location as shall have been approved by the Awarding Authority within ninety days of the receipt of the order of the Awarding Authority. Upon relocation Applicant shall promptly supply Awarding Authority with "as built" plans of the relocated Facility. Following the transfer of the Facility and any Attachments from the Existing Facility to the New Facility, the Existing Facility shall be removed from the site within ninety days from the date of completion of the transfer.

Except to the extent allowed by law and unless directly and proximately caused by the willful, intentional or malicious acts by the Town, the Town shall not be liable for any damage to or loss of any Overhead or Underground Facility located in the Right-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the Right-of-Way by or on behalf of the Town. Rights-of-Way Permits and Grants of Location for Facilities that have been ordered to be relocated will be amended to reflect the new location once the Facilities have been re-located.

F. Re-Location of Facilities due to Public Necessity

The location of any Overhead or Underground Facility covered by a Right-of-Way Permit may be changed by order of the Awarding Authority if it determines in its reasonable discretion that public necessity requires relocation of the Facility. Except for Emergency Repair-Work, Applicant is required to notify all Co-Locators upon receiving an order to relocate the Facility from the Awarding Authority. Applicant and all Co-Locators shall, at their own expense, relocate their Facilities to such location as shall have been approved by the Awarding Authority within ninety days of the receipt of the order of the Awarding Authority. Upon relocation Applicant shall promptly supply Awarding Authority with "as built" plans of the relocated Facility. Following the transfer of the Facility and any Attachments from the Existing Facility to the New Facility, the Existing Facility shall be removed from the site within ninety days from the date of completion of the transfer.

Unless directly and proximately caused by the willful, intentional or malicious acts by the Town, the Town shall not be liable for any damage to or loss of any Overhead or Underground Facility located in the Right-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the Right-of-Way by or on behalf of the Town. Rights-of-Way Permits and Grants of Location for Facilities that have been ordered to be relocated will be amended to reflect the new location once the Facilities have been re-located.

G. Assignment of Facilities

Except to the extent that Section 15B of Chapter 166 of the Massachusetts General Laws and other current law limits the ability of the Town to transfer a Right-of-Way Permit, a Right-of Way Permit is not assignable. If a Permit-Holders

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transfers ownership or use of its Facilities to another entity, such entity must apply for and receive its own Permit in accordance with this By-Law.

H. Non-exclusive grant

No Permit granted under this By-Law shall confer an exclusive right, privilege, license or franchise to occupy or use the Right-of-Way of the Town for delivery of services or any other purposes. No Permit granted under this By-Law shall convey any right, title or interest in the Right-of-Way but shall be deemed a license to use and occupy the Right-of-Way in accordance with the terms of this By-Law and the Town of Canton Right-of-Way License Agreement. Further, no Permit shall be construed as a warranty of title. A Permit granted shall be limited to a license to use only that specific portion of a Right-of-Way as specified in the Plan that accompanies the Application and in any Permit or License Agreement.

I. Co-Location of Facilities

Issuance of a Right-of-Way Permit may be conditioned upon the agreement of the Applicant to make Excess Capacity available to the Town. The Town reserves the right to place, free of charge, signal circuits, signal supply circuits and the equipment attached to these circuits belonging to the Town and used by it exclusively for municipal purposes on or in all Existing Facilities with Excess Capacity and on or in New Facilities then owned or controlled by an Applicant which is a Public Utility and shall be allowed access whenever necessary to place, maintain or remove its wires and cables.

J. Insurance

The Permit Holder shall acquire and continuously maintain while it possesses a Right-of-Way Permit liability insurance coverage on all personnel and equipment used to construct, operate, maintain and repair the Overhead and Underground Facilities located within the Right-of-Way. This insurance must be with insurance companies licensed to do business in the Commonwealth of Massachusetts and shall contain the following coverages and be in the following minimum amounts:

Commercial General Liability Insurance- including operation, independent contractors, complete operations for a period of one (1) year from completing the street opening work, XCU hazards, broad form property damage and personal injury.

General Aggregate: \$ 2,000,000.00 Products and complete operations Aggregate \$ 2,000,000.00 Each occurrence \$ 1,000,000.00 Combined single limit \$ 1,000,000.00

Automobile Liability Insurance (covers owned, non-owned and hired vehicles) Bodily Injury Liability \$ 500,000.00 each person 163

\$ 1,000,000.00 each accident Property Damage Liability \$ 250,000.00 each accident Combined Single Limit \$ 1,000,000.00

Worker's Compensation and Employer's Liability Each Accident \$ 100,000.00 Disease- Policy Limit \$ 500,000.00 Disease- each Employee \$ 100,000.00

Certificates of Insurance shall provide for at least thirty (30) days notice to the Awarding Authority of cancellation or material change. The name of the municipality shall be listed as an additional insured on the Certificate of Insurance.

K. Construction Requirements

Independent reference excerpt. Consult the official town PDF for authoritative formatting and subsequent amendments.

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