

City of Philadelphia



(Bill No. 030378)

AN ORDINANCE

Granting permission to Coleman Properties, a Pennsylvania partnership, its successors and assigns to construct, maintain and operate, replace, and remove a ductbank for telecommunications purposes under the Delaware River and the Frankford Creek Channel and aerial facilities for telecommunications purposes along, over, in and under the public rights-of-way, City streets and Frankford Creek Channel; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. (a) Permission is hereby granted to Coleman Properties, a Pennsylvania partnership, 202 Titus Avenue, Warrington, PA 18976, and its successors, assigns, and agents (collectively "Coleman Properties"), to construct, maintain, operate, replace, and remove 1) a ductbank containing thirty (30) one and one half inch (1 ½") inner ducts beneath the Delaware River and the bed of Frankford Creek Channel as described in Route A below, and 2) telecommunications cables, conduits, access manholes and associated appurtenances along, in and under the public rights-of-way of the City of Philadelphia or private property, subject to the property owner's permission, and telecommunications cables within existing conduit, and on the existing utility poles or catenary poles of any other entities holding a grant pursuant to other City ordinances, subject to such owners consent, as described in Routes A and B designated below, both to create an infrastructure system used to transmit, receive and distribute telecommunications (collectively, the "Telecommunications Infrastructure System").

Route A. Delaware River and Frankford Creek HDD Bore and Underground Conduit: Starting in the State of New Jersey, a twenty inch (20") diameter conduit horizontal directional drilling ("HDD") Bore, containing thirty (30) one and one half inch (1 ½") inner ducts, proceeds beneath the Delaware River, across the state line and enters the channel of the Frankford Creek Channel. The Delaware River crossing and the entry to Frankford Creek Channel is on a line indicated by the center line of the Frankford Creek Channel. Said conduit terminates at an exit manhole located on the bank of the Frankford Creek Channel. The station and offset are listed in the table below:

<u>Centerline Station</u>	<u>Offset</u>	<u>Description</u>	<u>Remarks</u>
- 1+27	0 Ft.	HDD Crossing at State Line	(20") HDD Conduit with (30) 1 ½" inner ducts
5+35	115 Ft - Right	Exit Manhole	(8') x (12') x (7')

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Route B. Frankford Creek Aerial Telecommunications Route: An aerial telecommunications route beginning adjacent to the exit manhole on the bank of the Frankford Creek for the HDD Bore and underground conduit described above for Route A and terminating near the right-of-way of Richmond Street. The Route B station and offset numbers are listed in the table below:

<u>Pole #</u>	<u>Frankford Creek Centerline Station</u>	<u>Offset Distance and Direction</u>
1	5+35	122 Ft - Right
2	7+11	136 Ft - Right
3	7+54	136 Ft - Right
4	9+13	128 Ft - Right
5	10+64	128 Ft - Right
6	12+16	128 Ft - Right
7	13+40	128 Ft - Right
8	14+94	128 Ft - Right
9	16+47	128 Ft - Right
10	17+98	128 Ft - Right
11	19+48	128 Ft - Right
12	21+01	128 Ft - Right
13	22+51	128 Ft - Right
14	24+06	126 Ft - Right
15	25+56	125 Ft - Right
16	27+13	125 Ft - Right
17	28+73	118 Ft - Right
18	30+32	119 Ft - Right
19	31+74	106 Ft - Right
20	31+75	96 Ft - Left
21	33+22	148 Ft - Left
22	34+73	161 Ft - Left
23	36+25	161 Ft - Left
24	37+85	161 Ft - Left

(b) Coleman Properties must submit proof of authorization from the governmental body having jurisdiction over the Delaware River and the Frankford Creek Channel; from the governmental body responsible for maintaining any highway bridge crossing over a railroad right-of-way, highway or other real property if the aerial facilities described in this Section are constructed on or attached to any such bridges; and from the owner of any private property where the ductbank or aerial facilities are authorized this Section.

(c) The ductbank described in Section 1(a) above for Route A shall be constructed in accordance with the requirements and under the supervision of the

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Department of Streets, without interference with any existing surface or subsurface structures, and shall be used by Coleman Properties exclusively for the purposes set forth in this Section and in accordance with all ordinances and regulations of the City governing the construction, maintenance, and operation of underground structures and the equipment, facilities and/or appurtenances placed therein.

(d) Coleman Properties shall reserve two (2) of the thirty (30) inner ducts of the ductbank described in Section 1(a) for the use of the City for whatever purpose the City, in its sole discretion, may determine, without conditions and at no cost or expense to the City for the construction, maintenance and/or use of the reserved ducts.

(e) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of the ductbank at any location along the route and is not a guaranty that the ductbank can be placed at any particular location along the route. In the event that it is impossible or infeasible to construct and install any portion of the ductbank along the route listed in this Ordinance, Coleman Properties may propose and the Department of Streets may approve an alternative route for the location of such portion of the ductbank; such alternative route as may be approved by the Department of Streets is hereby authorized. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval that Coleman Properties must by law obtain prior to construction of conduit or a ductbank, or occupancy of existing conduit or ductbank(s), in the public right-of-way.

(f) All facilities constructed pursuant to this Ordinance that include an alteration to a rail/highway crossing, which includes such crossings as they are defined under state law, must have, in addition to the approvals set forth in this Ordinance, the appropriate approval of the Pennsylvania Public Utility Commission. Coleman Properties has the sole responsibility to obtain any required Pennsylvania Public Utility Commission approval(s).

(g) Prior to the installation or operation in the ductbank authorized by this Ordinance, or of any telecommunications or other facilities or appurtenances thereto, including but not limited to fiber optic and other cables and facilities for the provision of telecommunications service as defined at 47 U.S.C. § 153(46), the owner of the facilities and/or appurtenances must have obtained, by Ordinance of City Council, the City's permission to occupy a right-of-way in the City, and must submit to the Commissioners of the City Departments of Streets and Public Property information on the proposed installation and/or operation, in form and content acceptable to the City, for their review and approval. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval for occupancy of the ductbank to any entity seeking to install telecommunications or other facilities or appurtenances in the ductbank.

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(h) Before Coleman Properties attaches any aerial facilities to existing utility poles along a public right-of-way, Coleman Properties must identify the specific legislation authorizing the utility pole to be constructed along the public right-of-way, the specific identification number of the utility pole and the specific agreement between the City of Philadelphia and the owner of the utility pole which gives the utility pole owner the right to construct the utility pole within the public right-of-way.

SECTION 2. In the event that any portion of the ductbank or the aerial facilities authorized in Section 1 must be relocated to accommodate a public improvement or public facility, whether such improvement or facility is constructed by the City or by another governmental entity, or by contract with the City or with any governmental entity, the Department of Streets shall provide Coleman Properties with written notice at least one hundred eighty (180) days prior to the date any action would be required by Coleman Properties to relocate said portion of the ductbank. Within one hundred eighty (180) days of service of said notice upon Coleman Properties, Coleman Properties shall relocate said portion of the ductbank or aerial facilities and restore any portions of the roadway, footway or the Frankford Creek Channel disturbed by the relocation to the condition it was in prior to the relocation, without cost or expense to the City. In the event that Coleman Properties is required to remove any portion of the ductbank at the request of the City, the Department of Streets shall cooperate with Coleman Properties in order to identify a replacement and alternative right-of-way for the relocation of said portion of the ductbank or aerial facilities which may be utilized without unreasonable inconvenience; such alternative location as may be approved by the Streets Department is hereby authorized.

SECTION 3. The Philadelphia Code section 11-204(5) does not apply to the ductbank authorized by this Ordinance.

SECTION 4. The permission granted to Coleman Properties by this Ordinance shall be and is subject to the terms and conditions of this Ordinance and other applicable ordinances of the City, including, but not limited to, all ordinances of general application currently in existence or subsequently enacted that are related to the right of occupancy and use of property in, under, over, along and across the streets, sidewalks, alleyways, easements and rights-of-way, the Frankford Creek Channel and the Delaware River within the City.

SECTION 5. Nothing in this Ordinance authorizes Coleman Properties to:

(a) Provide to subscribers within the City “cable service” (as defined at 47 U.S.C. § 522(6)), or “video programming” (as defined at 47 U.S.C. § 522(20)) as an open video system operator pursuant to 47 U.S.C. § 573(a) or otherwise.

(b) Furnish “telecommunications service” as defined at 47 U.S.C. § 153(46).

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(c) Install or operate, or permit any other entities to install or operate, any fiber optic or other cables or facilities or appurtenances thereto in the ductbank authorized by this Ordinance for the purpose of Coleman Properties itself providing such telecommunications service.

(d) Permit occupancy of the ductbank by any entity that has not obtained permission to occupy a right-of-way in the City by ordinance of City Council and all permits required by the City for such occupancy.

SECTION 6. Before exercising any rights and privileges under this Ordinance, Coleman Properties shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that Coleman Properties shall, *inter alia*:

(a) Furnish the City with a bond with corporate surety in an amount required by the Department of Streets and in form satisfactory to the City Solicitor to ensure the compliance with all the terms and conditions of this Ordinance and the Agreement and to protect and to indemnify the City from and against all damages or claims for damages which may arise directly as a result of the construction, maintenance, operation or removal of the Coleman Properties ductbank or aerial facilities authorized by Section 1.

(b) Secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entity as may be required by law.

(c) Assume the costs of all changes and adjustments to, and relocation and abandonment of, all utilities and structures wherever located as may be necessary by reason of the installation of the Coleman Properties ductbank or aerial facilities authorized by Section 1.

(d) Carry insurance protecting against liability for injury to persons or property of others, naming the City as an additional insured party in such amounts as shall be reasonably satisfactory to the City Solicitor.

(e) Pay all charges, rents, franchise fees or other fees that the City may now or in the future impose for a licensee’s occupation of City property, streets, rights-of-way, the Frankford Creek Channel and the Delaware River.

(f) Remove any or all portions of the ductbank and aerial facilities authorized in Section 1 from the public rights-of-way, Frankford Creek Channel and Delaware River pursuant to applicable City specifications within sixty (60) days when the ductbank or a portion of the ductbank is no longer used for the purpose authorized by this Ordinance or existing law.

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(g) Make necessary adjustments, or reimburse the City for making adjustments, to any manhole constructed as part of the ductbank approved in Section 1 when instructed to do so by the Streets Department in preparation of a street paving project.

(h) Mark each manhole constructed as part of the ductbank approved in Section 1 with identification of the owner of the manhole in a manner designated by the City.

(i) Provide that Coleman Properties shall not sell or transfer any individual duct within the ductbank authorized in Section 1 or a portion of the capacity of an individual duct within the ductbank to another entity without the express authorization of the City.

The permission granted by this Ordinance and the rights and privileges provided herein, are strictly conditional on Coleman Properties entering into such Agreement.

SECTION 7. The City Solicitor shall include in the Agreement such other terms and provisions as shall be deemed necessary to protect the interest of the City.

SECTION 8. The permission granted to Coleman Properties to construct, maintain and operate, replace and remove a ductbank and aerial facilities for telecommunications use under and in the public rights-of-way and City streets listed in Section 1 of this Ordinance shall expire without any further action by the City if Coleman Properties has not entered into the Agreement as required by Section 6 within one (1) year after this Ordinance becomes law.

SECTION 9. The permission granted to Coleman Properties for installation and or construction of the ductbank and aerial facilities along the routes identified in this Ordinance shall expire without any further action by the City unless Coleman Properties has substantially completed the construction of the ductbank authorized herein within two (2) years after the date this Ordinance becomes law. A change in ownership of the assets of Coleman Properties does not, without express written permission of the City, extend the time for substantially completing the construction of the ductbank authorized herein.

SECTION 10. The City reserves the right to charge a transfer fee for any agreement transferring the rights-of-way license from one entity to another so as to insure that all costs incurred by the City related to the transfer are reimbursed. The transferee must pay all costs incurred by the City associated with such transfer within thirty (30) days of the date the City submits such costs to the transferee or the transferee's authorized agent.

SECTION 11. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after this Ordinance becomes law.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 5, 2003. The Bill was Signed by the Mayor on July 31, 2003.



Patricia Rafferty
Chief Clerk of the City Council