

## UTILITY RELOCATION PROGRAM

(a) **Purpose.** This Utility Relocation Program ("Program") is intended to promote the cooperation of the owners of private utility facilities where the relocation of their facilities is necessary to accommodate public improvement projects.

(b) **Definitions.** For purposes of this Program, the following terms shall have the meanings ascribed in this section.

*Beneficiary* means only the following persons, firms or companies, regardless of type or form of organization or business structure that file a declaration under Section (c) below:

- (1) Telecommunications providers operating under Chapter 283, Texas Local Government Code, without a current franchise granted by the City;
- (2) Utility providers or others with a current City franchise that does not specifically require the relocation of facilities at the franchisee's sole cost to accommodate a public improvement project; or
- (3) Utility providers or others that own facilities in the public right-of-way and that claim any right to city reimbursement of facility relocation costs to accommodate a public improvement project.

*Director* means the Director of Public Works and Engineering or his designee.

(c) **Declaration of participating entity.** To be entitled to any benefit under this Program, a Beneficiary must execute and file a declaration with the Director in a form promulgated by the Director.

(d) **Encumbrance of Set-aside Funds.** Upon the approval by the Director of a declaration filed by a Beneficiary, a portion of the funds appropriated for the Set-aside Funds, as defined in City of Houston Ordinance No. 2005-\_\_\_\_, (the "Ordinance"), in the amount of relocation costs set forth in such declaration and approved by the Director, shall be encumbered for the benefit of such Beneficiary, to the extent that sufficient unencumbered appropriated Set-aside Funds are available, subject to the following:

- (1) The Director may only deny approval of a declaration if the amount of relocation costs set out in the declaration are more than 10% higher than the Director's estimate of actual relocation costs. In the event the Director denies approval of a declaration, he shall notify the submitting Beneficiary

who may, within 10 days of receipt of the notice of denial, submit additional documentation to the Director to support the amount of relocation costs set out in the declaration. If within 10 days of receipt of additional documentation, the Director again denies the approval of the declaration based upon his review of the additional documentation to support the reasonableness of the cost, or if the Beneficiary elects not to submit additional documentation, the Beneficiary may request and the Director shall approve, an encumbrance of the amount of the Director's estimate of relocation costs plus 10% and reserve the opportunity to adjust the encumbrance after actual relocation costs are known pursuant to Subsection (2) of this Section (d).

- (2) Within 30 days following the completion of any relocation by a Beneficiary pursuant to Article XVIII of Chapter 40 of the City's Code of Ordinances, the Beneficiary shall provide the Director true and correct copies of all documents reflecting the Beneficiary's actual relocation costs and, if approved by the Director, shall result in a commensurate adjustment to the amount of funds encumbered in such Beneficiary's name in the Set-Aside Funds.
- (3) The Director shall have 30 days to either approve or contest the Beneficiary's actual relocation cost submission as reflecting reasonable costs and provide notice of the decision to the Beneficiary and shall proceed as follows:
  - (a) If the Director approves the Beneficiary's actual relocation costs, he shall take action to notify the City Controller of his approval of the costs and to encumber funds in the amount of the approved costs for the benefit of the Beneficiary and shall notify the Beneficiary in writing of such action; or
  - (b) If the Director disagrees with an actual relocation cost submission as not reflecting reasonable costs, he shall provide the submitting Beneficiary written documentation of the amount of relocation costs supported by the Director not later than 15 business days after receipt of the cost submission. The Beneficiary shall have an additional 10 business days after receipt of the Director's decision to file with the Director any further documentation of its costs.
    - (i) If no additional documentation is filed by the Beneficiary within 10 days after its receipt of the Director's decision, the Director's original decision shall be final and binding on all parties and funds in the amount supported by the Director shall be

encumbered for the benefit of the Beneficiary in the manner set forth in the preceding section.

- (ii) If additional documentation is filed by the Beneficiary but fails to persuade the Director to change his decision as to the reasonableness of the costs, the matter shall be placed before the City Council for a hearing pursuant to Rule 12 of the City Council Rules of Procedure (City Code § 2-2); provided, however, that the decision of the City Council shall be based solely on its review of the relocation cost documentation prepared by the Director and the Beneficiary, which determination shall be final.
- (iii) Upon a final determination by the City Council, the Director shall take action to ensure that funds in the amount of the relocation costs approved by the city council shall be encumbered in the Set-Aside Funds, to the extent that unencumbered appropriated Set-aside Funds remain, for the benefit of the Beneficiary.

(e) **Payments to beneficiaries.** The amount encumbered for the benefit of any Beneficiary shall be paid to such Beneficiary within five banking days after the date that the City Controller receives a payment voucher from the Director together with written confirmation from the City Attorney that:

- (1) A judgment that is not subject to appeal has been entered by a court of competent jurisdiction holding that relocation costs must be reimbursed by the City, and there is no substantial disagreement as to the meaning and effect of such judgment on payments to Beneficiary; or
- (2) Legislation enacted by the Texas Legislature becomes effective that either:
  - (i) prohibits the City from requiring the Beneficiary to relocate its facilities at the Beneficiary's expense; or
  - (ii) clearly places on the City the obligation to bear such relocation expenses.

Such payment shall be effected by the issuance of commercial paper from the appropriate commercial paper program as set forth in the Ordinance, and the deposit of the proceeds in the appropriate Set-aside Fund. A check for the payment of approved costs previously encumbered shall then be issued from such fund to the Beneficiary. Such payment shall also include accrued interest thereon at a rate per annum equal to the one-month LIBOR Rate in effect on the date of such judgment or the effective date of legislation, plus one percent (1.0%), from the date of such judgment to the date of payment

