

OFFICE OF THE INSPECTOR GENERAL

CITY OF BALTIMORE



Isabel Mercedes Cumming

Inspector General

Investigative Report Synopsis

OIG Case # 22-0015-I

Issued: April 6, 2022



OFFICE OF THE INSPECTOR GENERAL
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City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202



April 6, 2022

Dear Citizens of Baltimore City,

The Baltimore City Office of the Inspector General (OIG) received an anonymous complaint alleging potential fraud by a City of Baltimore subcontractor (Sub #1). According to the complainant, Sub #1 provides services on behalf of a franchise license holder (the Franchisee) related to the construction and maintenance of small cell tower sites¹ on light poles and other rights-of-way (ROW) areas throughout the City. Allegedly, Sub #1 engages in actions to make it appear as if the restoration of concrete and asphalt at sites where Sub #1 completed work is per City code requirements. The complainant opines that when Sub #1 completes a repair at small cell tower sites, it will instruct employees to lay a thin layer of bagged, wet concrete on top of previously installed concrete to create the perception that it was adequately poured concrete as per City codes. In addition, when restoring asphalt areas, Sub #1 directs its employees to throw buckets of water on other asphalt areas to create the perception that new asphalt has been laid during the restoration process.

The anonymous complainant states the City Department of Transportation (DOT) prohibits bagged concrete. DOT inspectors must be on-site to ensure only concrete from a mixing truck is used during restorations. Sub #1 is allegedly paying off inspectors to prevent them from inspecting the sites where restoration work is performed to circumvent the requirements outlined in the City codes. As explained more fully below, the OIG investigation found that Sub #1 has performed restoration at small cell tower sites that do not appear to meet the City code requirements.

Background

In October 2007, the City agreed with a different license holder to initially place small cell tower antennas on 61 City-owned poles. In April 2012, the Franchisee acquired all interests in that previous license holder's operations and initialized negotiations with the City to expand from the 61 original small cell tower sites.

The Board of Estimates (BOE) approved a *Memorandum of Understanding* (MOU) with the Franchisee. The MOU permitted the Franchisee to move forward with plans to expand the installation of small cell towers on City ROW while the terms of installations between the City and the Franchisee were being finalized. In addition, the MOU authorized the Franchisee to complete its work pending the execution of its *Franchise Agreement* between the City and the Franchisee pursuant to Article VIII of the City Charter. A *Franchise Agreement* allows for the construction, installation, maintenance, and removal of certain facilities in the City's ROW related to small cell tower sites. The Franchisee's agreement with the City was implemented in July 2016.

¹ A small cell tower site is one in which equipment is located to provide and enhance cellular communication signals throughout the City.

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This public synopsis is only a summary of a more comprehensive report of investigation submitted to the appropriate City management official

The Franchisee's Agreement

The Franchisee's agreement is valid for ten years, with three renewal terms of five years each.² The Franchisee is solely responsible for the cost of any remedial work to make the City poles, sidewalks, and other ROW suitable for their use and adherence to City code requirements. Further, any new installations of poles by the Franchisee for small cell tower installations automatically become the property of the City. At the same time, the Franchisee maintains responsibility for maintaining those poles along with all other ROW, as previously discussed.

In addition, the Franchisee also pays a flat rate of \$500.00 per year per pole. Typically, if the Franchisee needed to hook into the City's conduit system, it would pay a different fee amount. The Franchisee only pays a flat fee for each pole by not using the conduit.³ Furthermore, the Franchisee must pay the City an annual attachment fee according to the schedule shown in Table 1 below.

Table 1: Annual Attachment Fees

# of Attachments (Small Cell Towers)	Cost per Attachment
1-25	\$2,400
26-100	\$2,100
101-200	\$1,700
201-300	\$1,500
301-400	\$1,300
401-500	\$1,100
501+	\$900

When the Franchisee executed its agreement with the City, it covered 484 ROW locations for small cell tower sites. Providing the costs allocated in Table 1, plus an agreed-upon 4% annual increase of those costs during the tenure of the Franchisee's initial agreement, the City is projected to receive revenue from the Franchisee as shown in Table 2 below (Exhibit 3).

Table 2: Projected Annual City Revenue Received

Year	Projected Revenue from the Franchisee
2015	\$759,900.00
2016	\$790,296.00
2017	\$821,907.84
2018	\$854,784.15
2019	\$888,975.52
2020	\$924,534.54
2021	\$961,515.92
2022	\$999,976.56
2023	\$1,039,975.62
2024	\$1,081,574.85

² Currently, the initial agreement is due to expire in 2024.

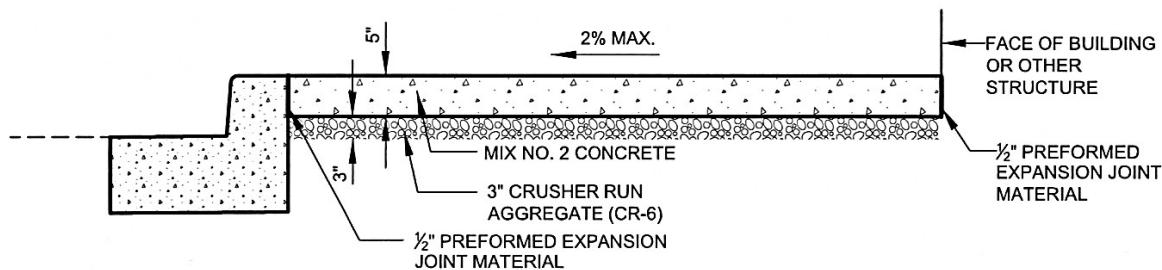
³ The City's conduit system is comprised of pipes or "ducts" used to protect and route wiring underground in the City's ROW. The ducts are made of either plastic, fiber, or Terra Cotta. Conduit is installed underground between multiple manholes, buildings, structures, or devices to allow for power and communication cables to connect buildings, businesses, and homes.

City Code Requirements

To better understand the City code requirements for small cell tower site maintenance, the OIG interviewed multiple administrators from the DOT. The DOT administrators are associated with the small cell tower program and are aware of the small cell tower sites operated by the Franchisee and Sub #1.

DOT administration informed the OIG that the City has precise criteria regarding the types of material used to construct and maintain small cell tower sites. Specifically, the City requires only Concrete Mix No. 2 to be used, and the depth of the concrete to restore a sidewalk to its necessary condition is a minimum of 5-inches, as shown in Figure 1.

Figure 1: Typical Section of Concrete Sidewalk



One of the DOT administrators (DOT #1) expressed their professional opinion that if a section of concrete were at the minimum 5-inch depth, there would not be the potential for just a thin, top-layer of concrete to chip away as alleged is occurring with the small cell tower sites maintained by the Franchisee and Sub #1.

A second DOT administrator (DOT #2) acknowledged their current responsibility for overseeing small cell tower site inspections related to maintenance performed by the Franchisee and Sub #1. As per City code, DOT #2 corroborated the requirements cited by other DOT administrators concerning concrete and asphalt repair work. In addition, DOT #2 informed the OIG, per terms of the Franchisee's agreement with the City, that all maintenance work is to be performed by the Franchisee during a one-year warranty period from the date of installation or the date of repair action. After the one-year warranty period, any issue with the condition of materials, including concrete, is first addressed with the Franchisee to repair. However, as the Franchisee does not have an obligation to make further repairs for "out of warranty" work, DOT #2 stated any required repairs at small cell tower sites after the warranty period are the City's sole responsibility. DOT #2 is unaware of any specific small cell tower sites the City has incurred an expense for repair due to being outside of the warranty period. However, this is unlikely to remain, as many of the Franchisee's small cell tower sites' warranty periods have expired or are expiring.

Concerns with the Franchisee's Small Cell Tower Sites

In the complaint received by the OIG, it was determined there are multiple small cell tower site restorations involving concrete or asphalt work completed by the Franchisee or Sub #1 that do not adhere to City code requirements. During the interview with DOT #2, the OIG provided them with photos of the multiple small cell tower sites revealing issues with the concrete restoration work completed by Sub #1. After reviewing the pictures of each site, DOT #2 opined that based on the condition of the concrete shown

in the pictures, including some in which the concrete appears to be less than one inch thick, City codes were not adhered to during the restoration process completed by Sub #1 on behalf of the Prime. Further, DOT #2 referred to §9.3 – Repair of Public Way cited in the Franchisee’s agreement with the City, which states the Franchisee is required to “...promptly repair such damage and return the [ROW] and any affected adjacent property to a safe and satisfactory condition to the City in accordance with the City’s applicable street restoration standards...”

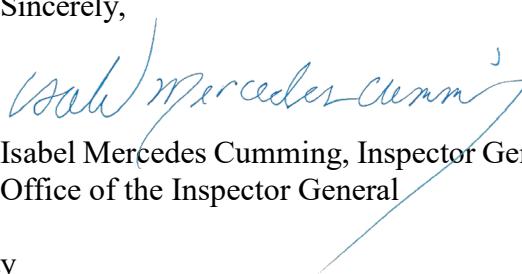
The OIG had DOT #2 describe the DOT inspection process for concrete restoration work completed by the Franchisee or Sub #1 at small cell tower sites. Dot #2 stated that before the COVID-19 pandemic, a DOT inspector would be on-site while the restoration work was completed. However, due to a reduction in DOT inspection staff and during the COVID-19 pandemic, the DOT entered into agreements with the Franchisee and other vendors that permitted vendors to submit photographic evidence of the procedures taken during restoration work in-lieu of a DOT inspector being physically present. DOT #2 explained that vendors would submit photos showing a cement truck on-site, portions of the concrete or asphalt area removed, and pictures of the completed concrete/asphalt project. Further, DOT #2 stated that unless a concern about the results of a concrete/asphalt restoration project was brought to the attention of the DOT, there was no expectation or requirement for a DOT inspector to complete a follow-up inspection at a restoration site.

OIG Findings

The OIG investigation found no corroboration of the allegation the Franchisee or Sub #1 is issuing bribes to DOT inspectors to overlook subpar restorations at small cell tower sites. DOT #2 explained to the OIG that those duties were randomly assigned when a restoration project received a physical inspection from a DOT inspector. Thus, no specific DOT inspector solely inspected the Franchisee’s small cell tower concrete/asphalt restoration sites.

The OIG investigation substantiated the portion of the complaint regarding alleged shoddy concrete restoration work completed at a sampling of the Franchisee’s small cell tower sites. As a result of the OIG investigation, the DOT conducted an independent investigation of all of the Franchisee’s sites, including those in the OIG’s sampling. The DOT determined approximately 450 sites where the Franchisee failed to restore those sites to DOT specifications. Subsequently, the DOT fined the Franchisee \$477,000 for the violations.

Sincerely,



Isabel Mercedes Cumming
Inspector General
Office of the Inspector General

Cc: Hon. Brandon M. Scott, Mayor of Baltimore City
Hon. Nick Mosby, President, City Council
Hon. Bill Henry, Baltimore City Comptroller
Honorable Members of the Baltimore City Council
Hon. Jim Shea, City Solicitor