

Request for Proposals for a Public Communications Structures Franchise

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS

REQUEST FOR PROPOSALS
FOR A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN
PUBLIC COMMUNICATIONS STRUCTURES IN THE BOROUGHS OF THE BRONX,
BROOKLYN, MANHATTAN, QUEENS AND STATEN ISLAND

PIN # 8582014 FRANCH3

IMPORTANT: IT IS UNLAWFUL TO ENGAGE IN ACTIVITY THAT UNDERMINES OR THWARTS A FAIR AWARD OF A FRANCHISE CONTRACT RELATED TO THIS RFP. THE NEW YORK CITY COMPTROLLER IS CHARGED WITH THE AUDIT OF CONTRACTS IN NEW YORK CITY. IF YOU BELIEVE THAT THERE HAS BEEN UNFAIRNESS, FAVORITISM OR IMPROPRIETY IN CONNECTION WITH THIS PROPOSAL PROCESS, PLEASE CONTACT THE NEW YORK CITY COMPTROLLER, OFFICE OF CONTRACT ADMINISTRATION, ONE CENTRE STREET, ROOM 835, NEW YORK, NEW YORK 10007, TELEPHONE NUMBER (212) 669-3000.

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SECTION I SUMMARY

The City of New York, acting through its Department of Information Technology and Telecommunications ("Department"), invites all qualified firms to submit Proposals for a Franchise Contract running to June 24, 2026, with an extension at the City's option to a date not later than the day preceding the 15th anniversary of the commencement of such contract, for the installation, operation and maintenance of Public Communications Structures on City sidewalks ("Franchise Structures"). The City seeks Proposals that demonstrate excellence in the design, installation, operation and maintenance of Franchise Structures that are clean, safe, and attractive, in convenient locations to serve the needs of residents and visitors. In addition to proposals from individual operators, the City encourages companies to form partnerships for the purpose of submitting a proposal and the subsequent operation of a franchise.

This request for proposals was developed following a lengthy public outreach process through which the Department sought to learn more about the possibilities for a new type of telecommunications convenience to be installed on the City's streets. A request for information (RFI) was issued on July 13, 2012 and 22 responses were received. The RFI and responses can be reviewed on line at <http://www.nyc.gov/html/doitt/html/business/future-of-public-pay-phone.shtml>. After reviewing the responses the Department sought to more directly engage urban designers, planners and technologists by conducting the "Reinvent Payphones" design challenge. This challenge was announced in December of 2012 and elicited more than 125 submissions by the due date of February 18, 2013. To learn more about the Reinvent Payphones design challenge and to see the designs that were voted to be the best by an independent panel of judges, please visit: <http://www.nyc.gov/html/digital/html/opengov/reinventpayphones.shtml>.

It is the City's intention to maximize the public benefits under this franchise and to ensure that all New York City communities benefit from the services and the local economic opportunities presented by this initiative. In addition to the creation of new jobs for the development, servicing and maintenance of the Franchise Structures, the City expects that the services themselves will help support job seekers, freelancers, residents in need of affordable broadband services, small businesses, the local tech industry and visitors.

This Request for Proposals ("RFP") is made pursuant to City Council Authorizing Resolution No. 2309 which authorizes the granting of franchises for the installation of public pay telephones and associated equipment on, over, and under the inalienable property of the City and City Council Authorizing Resolution No. 191 which authorizes the granting of franchises for installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services. This request for proposals is issued in furtherance of the scheme set forth in Local Law 68 of 1995, which is codified at Sections 401 through 408 of Title 23 of the New York City Administrative Code. The scope of this request for proposals includes the installations of facilities only on public property, and is not intended to include or cover any facilities that any entity or person may wish to install on private property, which installations on private property do not require a franchise from the City and thus fall entirely outside the scope of the Local Law 68 scheme and this request for proposals.

Pursuant to this authority, the Department is seeking Proposals for a Franchise that will provide for excellence in design, installation, operation and maintenance, as well as the following:

- The installation, operation, and maintenance of up to 10,000 Public Communications Structures providing advertising, Wi-Fi, and phone services in all five boroughs. There currently exist more than 7,300 payphone installations. It is anticipated that proposers will propose new designs for the replacement of the existing payphone inventory. The selected proposer (sometimes referred to hereinafter as "the Franchisee") will not be permitted to charge a fee for Wi-Fi service but may charge a fee for phone services with the exception of 911 and 311 phone calls.
- The option to install cell phone charging stations and permission to charge a fee for cell phone charging station services.
- The installation and maintenance of solar panels or other viable features that promote sustainability for incorporation into the advertising/Wi-Fi/phone structures.
- The incorporation of other telecommunication services complementary to those listed above initially or during the term of the franchise.

The design and placement of the Franchise Structures will reflect the following goals:

- In order to minimize impacts on pedestrian circulation and the visual character of the streetscape, the footprint and height of the Franchise Structures must be kept as small as possible consistent with their function and other requirements.
- In order to maximize pedestrian circulation and clear paths, Franchise Structures must be aligned with adjacent existing elements on the sidewalks to the extent possible.
- Franchise Structures must complement other public street furniture elements within the city.

The Franchisee will be permitted to display advertising on the Franchise Structures subject to specific criteria and limitations as more fully described below.

Compensation to be paid to the City will be the greater of (a) a percentage of gross revenues derived by the Franchisee as a result of the operation of the Franchise Structures and the display of advertising thereon or (b) a guaranteed minimum annual amount. Each respondent must state in its response to this RFP a proposed percentage of revenue generated from the provision of the contemplated services, to be paid to the City (which percentage must be no less than 50%) and a proposed guaranteed minimum annual amount as further described in Section III. A. 6. below.

The minimum compensation will be increased annually by the Consumer Price Index (CPI)-All Urban Consumers [New York-All Items] in effect at the anniversary date of the effective date.

The Franchisee will be required to submit monthly reports of gross revenues, in a format approved by the Department, broken down into categories of income. At the end of each operating year, the Franchisee will be required to submit a detailed income and expense statement for the past year's operation. The franchisee will also be required to provide reports on a monthly basis showing the number, types and duration of phone calls made and the number and duration of Wi-Fi sessions per installation.

By submitting a Proposal, Proposers understand and accept that at a minimum the terms and conditions in Resolutions No. 2309 adopted by the New York City Council on December 21,

2009 and No. 191 adopted by the New York City Council on August 25, 2010, will become part of any Franchise granted.

On **May 12, 2014**, the Department will conduct a Pre-proposal Conference to provide an opportunity for interested parties to ask questions regarding the RFP. Proposers are advised to request scheduling details from the Authorized Agency Contact.

Proposals are due on **June 30, 2014, at 5:00 PM EST** and must be submitted in accordance with the Proposal Package Submission Requirements contained herein.

SECTION II SCOPE OF SERVICES

A. GENERAL INFORMATION

1. Services

- a. **Telephone** – As of March 2014 there are 7,302 public pay telephone installations on the City’s sidewalks operating pursuant to existing franchises. The successful proposer will be required to purchase and take ownership of all of the public pay telephones on the City’s streets operated pursuant to franchises as of the effective date of the new franchise (“Pre-Existing PPTs”) and will be required to operate and maintain each Pre-Existing PPT until a Franchise Structure to replace it is installed or until the City otherwise authorizes its removal. Each Franchise Structure will provide a user with the ability to make free calls to 911 and 311. The ability to make other calls must also be provided. The City will not require that callers be allowed to pay by coin as long as there is an easy method to make payment. Free limited duration local calls are encouraged. Proposers are also encouraged to propose text message capabilities. The franchise will include provisions consistent with Section J (16) of Resolution No. 2309 attached in Appendix 1 hereto.
- b. **Wi-Fi** – Each Franchise Structure with advertising on it must also provide, in addition to telephone service, completely free Wi-Fi (wireless fidelity) service. The Wi-Fi service must be provided 24 hours a day, 7 days a week and must provide a signal strong enough to reach a minimum of 85 feet across a busy street. The Wi-Fi hotspots should work together as a network. A user should be able to log in once and stay connected while within 85 feet of any hotspot. The user’s device should be allowed to automatically re-connect after a connection has been severed and the user comes within the range of one of the network’s hotspots. The City will allow advertising on the login page. Revenue from such advertising will be considered a part of gross revenues.
- c. **Other services** – Proposers are encouraged to include additional telecommunication and telecommunication related services in their proposals. These services may include cell phone charging stations, touch screens that provide information or facilitate business transactions, options (in addition to those required as described in paragraph a. above) for users who are deaf or hearing impaired, and any other service that relies on the use of telecom facilities and would be consistent with the applicable authorizing resolutions. Proposers are also encouraged to design the franchise structures in a way that allows components to be added in the future and existing components to be replaced. This flexibility would allow new technology to be incorporated into the franchise structures during the term of the contract, which will include an approval process for additions.

2. Design

The Public Communications Structures Franchise is an important new initiative for the City of New York. Its primary goals are to provide the public with a telecommunications amenity that is

desirable to pedestrians, merchants, and property owners and to replace the existing public pay telephone kiosks with structures of significantly higher design quality.

Designs must achieve aesthetic excellence and must be compatible with a wide variety of built contexts. Proposers should note that there exist certain privately owned intellectual property rights related to the bus shelter and newsstand design currently implemented on City sidewalks.

Designs will be evaluated on the basis of functional efficiency, aesthetics, security, durability, adaptability for various built environments around the City, including historic districts and individual landmarks, and accommodation of people with disabilities. All designs are subject to the approval of the Department.

For each type of standard Franchise Structure Proposers must submit two basic designs. The first design shall be suitable for deployment throughout the City. The second design for each type of standard Franchise Structure shall be appropriate for use within districts that are designated historic districts or in front of individual buildings that are designated New York City Landmarks. Installations in historic districts and adjacent to individual landmarks will be subject to Landmarks Preservation Commission (LPC) rules and DoITT rules. These rules currently limit where advertising can be placed on an installation and prohibit the use of illuminated advertising. The proposed designs may also be deployed on a limited basis in other locations. Some degree of variation in these basic designs is also required.

Franchise Structures must be available in several sizes and configurations to meet the constraints imposed by various street conditions and users' needs. **In addition to designs that incorporate the display of advertising, proposers must propose at least one design that does not include the display of advertising for use in exclusively residential zones.** A list of current public pay telephone locations is available upon request from the Authorized Agency Contact.

All components of the Franchise Structures must be fabricated of high quality, durable, maintainable and vandal-resistant materials. To the maximum extent feasible, all surfaces of the Franchise Structures that are accessible to the public must be graffiti-resistant. Footings shall be imbedded in the sidewalk so that there are no surface plates to create a trip hazard. Adequate illumination of the Franchise Structures and adjacent sidewalks must be provided. Proposers are encouraged to include the use of independent power sources, such as solar energy, as an alternative to connecting by underground conduit to the local utility.

The design and placement of the Franchise Structures will be subject to the review and approval of the Public Design Commission and the Landmarks Preservation Commission, to the extent required by law. All Franchise Structures must be accessible to people with disabilities, and the Franchisee will be required to comply with the Americans with Disabilities Act and any additional federal, state, and local laws relating to accessibility for people with disabilities as applicable. The Franchisee will be required to comply with all applicable New York City laws, rules and codes related to materials and construction.

Proposers must propose designs for Franchise Structures that fit within one of the following size envelopes (multiple designs in the same proposal need not all use the same one of the envelope options below):

- a) 90 inches in height (except that in areas where the installation is served by overhead wiring a mast of 90 inches in height may be incorporated allowing a total height of 180 inches) and 35 inches by 44 inches in dimension.
- b) 104 inches in height and 10 inches by 32 inches in dimension.
- c) 112 inches in height and 20 inches by 20 inches in dimension.
- d) 90 inches in height and 35 inches by 88 inches in dimension only for use on very wide sidewalks in special locations, but in no event more than 5% of the total built locations.

However, deviations up to 10% of each dimension may be permitted, in the City’s discretion, in order to accommodate required equipment or a greater public benefit than could otherwise be provided.

In every case, installations will be limited to two panels of advertising with no more than 1,539 square inches of advertising space on each panel. Preference will be given to designs that result in a smaller footprint and/or smaller envelope. Static digital advertising displays will be allowed generally in commercial and manufacturing zoning districts, but not adjacent to landmark sites and not within historic districts. Slow motion digital advertising will be allowed in high density commercial districts and will be approved on a case by case basis. Advertising outside of historic districts and not adjacent to landmark sites must be illuminated between dusk and dawn. As noted above, no advertising will be permitted in exclusively residential districts.

3. Build-out and Phase-in of Public Communications Structures

It is the desire of the City to minimize the disruption to its streets in relation to the installation of Franchise Structures. Therefore, Franchise Structures will primarily be installed as replacements for Pre-Existing PPTs where the Pre-Existing PPTs substantially meet (as determined by the Department) the siting criteria in Appendix 2. All such replacements shall be accomplished at the sole expense of the Franchisee. Additional Franchise Structures will be installed in such other locations as directed by the Department in accordance with the consultative process and the siting criteria. As of February 2014, there are 4,325 installations of Pre-Existing PPTs that include advertising panels in the five boroughs, which installations include 12,260 advertising panels. They are distributed as follows:

Advertising Installations by Borough

Borough	Total	Side Panel	Back Panel
Bronx	241	478	192
Brooklyn	511	1,003	403
Manhattan	2,925	5,665	2,710
Queens	629	1,250	507
Staten Island	19	38	14
Total	4,325	8,434	3,826

The City will guarantee that a minimum of **4,000** advertising installations will be authorized for Franchise Structures, distributed across the City as follows:

Guaranteed Advertising Installations by Borough

Borough	Total
Bronx	241
Brooklyn	511
Manhattan	2,600
Queens	629
Staten Island	19
Total	4,000

The existing PPT contracts provide that, in the event that the Commissioner determines at his or her reasonable discretion that by the expiration of the term of the preceding franchise that continuing operation of any portions of the existing PPT franchise infrastructure is necessary to protect and promote public safety, the City, may elect to direct the incumbent franchisees to sell, at fair value, to the City or to the City's designee such portion of the system on, over or under the Inalienable Property of the City and all associated equipment necessary for the proper functioning of such portion of the system.

The City intends to direct the remaining PPT franchisees to sell all existing PPT installations to the new franchisee. Therefore, the successful proposer will be required to purchase and take ownership of all Pre-Existing PPTs that remain on City streets (to the extent not already owned by such proposer, in the event such proposer is an existing franchisee) following the award of a new franchise. Until such time that Pre-Existing PPTs are removed and/or new Franchise Structures are installed, the Franchisee will also be required to operate and maintain Pre-Existing PPTs.

Proposals must include a proposed number of new Franchise Structures to be installed and a proposed targeted phase-in schedule for installation of such new Franchise Structures and the removal or replacement of the Pre-Existing PPTs. The proposed phase-in schedule should provide for an equitably scheduled distribution of Franchise Structures across the five boroughs. The proposed phase-in schedule should provide for completion of a citywide build out not later than four years of the Franchise's effective date.

Some of the existing public pay telephone advertising installations are closely clustered together. Replacement of all the installations in the cluster with units providing Wi-Fi may result in excessive Wi-Fi redundancy. As part of the proposed phase-in schedule proposers should identify existing advertising installations that proposer is either willing to eliminate from existing clusters or to relocate from an existing cluster to a new location, a minimum of 170 feet from any other Franchise Structures.

Where Pre-Existing PPTs are located less than 50 linear feet from another Pre-Existing PPT, the Department will work with the Franchisee to determine which Pre-Existing PPT should be removed and where a replacement Franchise Structure will be installed. An advertising installation subject to relocation as a result of this effort to reduce clustering will be permitted to remain until a replacement advertising installation has been installed and activated. The Department will also work with the Franchisee to identify locations to which Franchisee will, where practicable, relocate Pre-Existing PPTs not in compliance with the minimum distance requirements specified in Appendix 2. In no event will Franchise Structures be permitted that

are inconsistent with the 50 linear foot minimum clearance requirement set forth in Section H.(3) of City Council Resolution No. 2309 of 2009.

The Franchisee shall comply with all applicable sections of the building and electrical codes of the City of New York, obtain any required permits from the appropriate City agency, and pay any required fees. Where the work to be done in connection with the installation, operation, maintenance, repair, removal or deactivation of the Franchise Structures or Pre-Existing PPTs requires that such work be performed by an electrician, the Franchisee shall employ and utilize only licensed electricians. Quality workmanship must be employed at all times. State-of-the-art construction methods and building materials must be integrated into the Franchise Structures as they become available. After the installation or removal of any Franchise Structure or existing public pay telephone, the sidewalk immediately under or adjacent thereto must be restored to its proper condition by the Franchisee at the Franchisee's sole expense.

The City would like to see additional Franchise Structure installations in the boroughs of the Bronx, Brooklyn, Queens and Staten Island, in addition to the replacement of Pre-Existing PPTs by new Franchise Structures in these boroughs. Proposers should state the number of additional installations they propose to install in each of these boroughs. The City is also interested in having payphone and Wi-Fi service in residential areas where advertising is not allowed. Proposers should also state the number of non-advertising installations they would be willing to install in each borough. The number of additional installations and non-advertising installations will be taken into consideration when selecting a franchisee.

During the term of the Franchise, the Department may direct the Franchisee to remove, replace, and/or relocate Franchise Structures as necessary to accommodate changing conditions or to address security concerns. The Franchisee, at the request of the City, shall be required to remove Franchise Structures which interfere with the construction, maintenance or repairs of public utilities, public works or public improvements, or which the City otherwise deems to be inappropriate at a particular location. At the request of the City, Franchise Structures so removed must be reinstalled when construction, maintenance, or repairs are completed or relocated to sites approved by the City. All such removals, reinstallations, and/or relocations shall be accomplished at the sole expense of the Franchisee. Relocations directed by the City which are not related to changing conditions or security concerns will be limited to no more than 50 per year and replacement locations will be confined to the same community district as the installation that is being removed.

Failure to adhere to the phase-in schedule as directed by the Department, without adequate justification, will be grounds for cancellation of all or any portion of the Franchise Contract at the City's option, among other possible remedies.

4. Maintenance and Operation

Maintenance by the Franchisee of the Franchise Structures (and Pre-Existing PPTs, until they have been removed) shall be in accordance with applicable laws and include inspecting, cleaning and removing graffiti from the structures on at least two non-consecutive days each week, preventive maintenance and prompt repairs. The sidewalk immediately adjacent to the Franchise Structures (and Pre-Existing PPTs, until they have been removed) shall be maintained in its proper condition or, if necessary, restored at the Franchisee's sole expense. Repairs that are

necessary to ensure public safety, as determined by the Department, shall be performed within 24 hours of notification by the Department.

Failure to comply with the City's requirements regarding the cleaning of installations and the repair of telephone components is subject to fines returnable to the City's Environmental Control Board (ECB). To view a schedule of fines for violations associated with existing payphone installations, please visit:

http://www.nyc.gov/html/doitt/downloads/pdf/ecb_codes_fines_and_penalties.pdf.

The Franchisee must designate an authorized agent to be responsible for receiving any summonses issued by the City. The Franchise Contract must state the name, affiliation and mailing address of the authorized agent designated to receive service of any summonses issued related to the franchise.

The Franchise Contract will also provide for liquidated damages related to the Franchisee's failure to perform maintenance of Wi-Fi service to the satisfaction of the Department. A schedule of liquidated damages will appear in the Franchise Contract; liquidated damages will vary, based on the severity of the breach. Repeated failure to perform such maintenance to the satisfaction of the Department may be deemed a default in performance by the Franchisee and grounds for cancellation of all or any portion of the Franchise Contract.

The Franchisee shall also be responsible for acquiring and installing, at its sole expense, hardware and software for a computerized inventory system of the Franchise Structures and sites. This system will have database, mapping, and graphic capabilities for recording the location, type, design, and features of all installed Franchise Structures and the location, features, and status of proposed sites for Franchise Structures, including sites that have been rejected. The system will also have the capacity for contemporaneous two-way information sharing between the Department and the Franchisee regarding the installation, operation, and maintenance of the Franchise Structures. The system must be designed to capture and display information about phone and Wi-Fi operability for each installation. The Franchisee shall be responsible for maintaining said system and incorporating state-of-the-art technologies throughout the term of the Franchise. Proposers are encouraged to develop PC-based systems that use or are compatible with standard, commercially available programs subject to City collaboration and approval. Proposers must include a description of the proposed computerized inventory system with its proposal describing in detail how the system will be maintained, what software will be used ("Software") and who will be running it, and how, and for what purposes, the data contained within the system will be utilized by the Franchisee, and other matters required to be included as set forth in this Section II. A. 4. The system will be required to be operational within the first year of the franchise. On the expiration or sooner termination of the Franchise Contract, the computer system and data will become the property of the City without compensation to the Franchisee.

5. Ownership of the Structures, Software and Performance Reports

The Franchise Structures will remain the property of the Franchisee during the term of the Franchise Contract. On expiration of the Franchise Contract, the City may elect to have the Franchisee remove any or all of the Franchise Structures and restore their sites to their proper condition, which removal and restoration shall be at the Franchisee's sole expense. Franchisee

Structures not thus removed will become the property of the City or a successor franchisee, without compensation.

In the event of termination in whole or in part due to the default of the Franchisee, the Franchise Structures shall at the City's option become the property of the City without any compensation to the Franchisee. Alternatively, the City may direct the former Franchisee to remove any or all of the Franchise Structures and restore their sites to their proper condition, which removal and restoration will be at the Franchisee's sole expense. If the former franchisee fails to remove the Franchise Structures as directed, the City may order the removal of the Franchise Structures utilizing City personnel or a contractor and charge the cost to the former franchisee.

6. Security

Upon execution of the Franchise Contract, the Franchisee will be required to provide security, in the form of a performance bond, letter of credit or security deposit or a combination thereof, with a minimum initial face value of not less than twenty million dollars (\$20,000,000) and in any event sufficient to ensure the installation of the Franchise Structures and the faithful performance of all of the terms and conditions of the Franchise Contract, including, but not limited to, the build out obligations set forth in Section II.A.3. A portion of such security may be reduced or returned, as the case may be, to the Franchisee upon the successful installation of the Franchise Structures, in accordance with a schedule to be detailed in the Franchise Contract. The remaining portion of such security will continue to remain in place as such security throughout the term of the Franchise.

Proposals must include a description of the amount and form of security the proposer is offering. In evaluating proposals, the City will take into account the size and nature of the security offered, in the context of the overall financial assurances the proposal offers with respect to contract performance, which may include, in addition to performance bond/letter of credit/security deposit, the overall financial capacity of the proposed franchisee, the recourse the City will have to such capacity to assure performance, and any guarantees that the proposer is prepared to offer (such as from parent companies, owners, etc.). A final Franchise Contract will include a detailed description of the amount and form of security required to be provided, including provisions for reasonable City approval of bond companies, banks etc. that may be providing third party security.

The Department will be authorized to access performance bonds/letters of credit/security deposits as described in this section should the Franchisee fail to do the following:

- a) Make payment of the required compensation or taxes.
- b) Cure a breach of the Franchise Contract after notice from the Department, to cause the necessary work to be done.
- c) Make in-kind replacement and repair of sidewalks.
- d) Make payment of premiums for the liability insurance required pursuant to Section 7 below.
- e) Remove the Franchise Structures from the Inalienable Property of the City at the termination of the Agreement or at the election of the City.
- f) Perform other obligations as specified in the Franchise Contract.

7. Liability and Insurance

The Franchisee will be liable for, and shall indemnify, defend and hold the City, its officers, agents, and employees harmless from, any and all claims or damages to persons or property by reason of the installation, operation or maintenance of the Franchise Structures and Pre-Existing PPTs (providing that indemnification with respect to Pre-Existing PPTs shall only be applicable with respect to the period beginning with the effectiveness of the Franchise Contract). The Franchisee will be required to procure and maintain, at its sole cost and expense, the following types of insurance from an insurance company acceptable to the City (or meeting alternative insurance specifications as the City may from time to time reasonably require):

- a) Commercial General Liability Insurance covering the Franchisee as a named insured in the amount of ten million dollars (\$10,000,000) aggregate and ten million dollars (\$10,000,000 per occurrence), and naming the City, its officers, agents and employees as an additional insured thereunder, and endorsed to cover the liability assumed by the Franchisee. Such insurance shall protect the Franchisee, and the City, its officials and employees, from claims of property damage and bodily injury, including death, that may arise from any of the operations under the Franchise Contract. Such insurance shall cover, inter alia, products liability. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be occurrence based rather than “claims-made”. Such Commercial General Liability insurance and any umbrella and excess Insurance shall name the City, together with its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 26.
- b) Workers’ Compensation Insurance in accordance with applicable New York State law.
- c) Employers’ Liability Insurance in accordance with applicable New York State law.
- d) Automobile Liability Insurance in the amount of two million dollars (\$2,000,000) aggregate and one million dollars (\$1,000,000 per occurrence) and naming the City, its officers, agents, and employees as an additional insured.

8. Partnerships

In addition to proposals from individual operators, the City encourages companies to form partnerships or joint ventures for the purpose of submitting proposals and the subsequent operation of a franchise. The City envisions several advantages to partnership arrangements. Partnerships may be useful to provide added expertise in diverse subject matter areas such as landline telecommunications, public Wi-Fi, and outdoor advertising. Partnerships may also be useful in maximizing capital investment and minimizing risk to the franchise.

B. REVENUE OPPORTUNITIES

The primary source of revenue to the Franchisee will be the sale of advertising space on the Franchise Structures. Advertising will be permitted on the exterior of the structures subject to the conditions specified below.

- The total maximum advertising area shall be no greater than 1,539 square inches per panel.
- Each Franchise Structure may have a maximum of two advertising panels.

Static digital advertising, utilizing a 15-second fade in/fade out as images change, will be allowed in zones that allow commercial and/or manufacturing uses. Slow motion digital will be allowed in high density commercial districts only on a case-by-case basis. However, digital advertising will not be allowed in historic districts or adjacent to a landmark site. Other electronic media (such as “zippers”) will be permitted only on a case-by-case basis and, except for backlighting of printed posters, will be subject to the applicable zoning regulations for property adjacent to the site. Audio advertising will not be permitted. However, an audio component used in connection with the telecommunications services provided may be permitted in the sole discretion of the Department.

Advertising displayed on Franchise Structures will be subject to requirements, to be described in the Franchise Contract, substantially comparable to those set forth in Section 4.10 of the current payphone franchises, which the Franchisee shall be responsible for applying in determining the advertising it chooses to display on the franchise structures.

The Franchisee will not be permitted to charge the public, or the City, for the use of the Wi-Fi network provided from each advertising installation. The Franchisee may however, elect to seek support for the Wi-Fi service through sponsorships, subject to the City’s approval. Such support will be considered revenue and will be a component of gross revenue of which the City will receive a percentage. Proposals for advertising on the Wi-Fi splash page will also be considered.

The Franchisee may also generate revenue from long distance and from local calls. Calls to 911 and 311 shall be free to the public. The City encourages proposals that also provide some level of free local calls.

Proposers may also propose other telecommunications related services that generate revenue such as mobile device charging stations.

Public Service Advertisement Space

The Franchisee shall be required to provide space, for the City’s own use in its sole discretion, including, but not limited to commercial advertisements, marketing and promotion of the City and its partners, and public service advertisements on the Franchise Structures at no cost to the City. The space provided will represent a minimum of 5% of the total number of advertising panels on the Franchise Structures, which will be equitably distributed, in terms of panel value, geographically, and among the types of Franchise Structures. The Proposer may propose a larger minimum amount of total ad panels it is willing to provide to the City. The installation, maintenance and removal of all public service advertisements must be performed by the Franchisee in accordance with the same standards and utilize the same materials and methods as are used by the Franchisee for commercial displays.

Transition

Once a proposal has been selected pursuant to this RFP, there may be opportunities for the selected proposer to agree with existing franchisees on transitioning then-existing, unexpired

advertising contracts to the new franchisee. Such arrangements may help allow existing franchisees to continue to maximize revenue to the date the new franchise becomes effective while also allowing the new franchisee to maximize initial revenue from the effective date without having to start entirely with all new advertising contracts from the effective date of its new franchise. The City cannot assure that such arrangements will be achievable, and they will be up to the new and existing franchisees to arrange among themselves.

C. SITE SELECTION AND CONSULTATION

New sites for Franchise Structures that are not replacing Pre-Existing PPTs will be selected by the Department in accordance with the criteria specified in Appendix 2. In addition to the criteria specified in Appendix 2 the Department will ensure that new sites are a minimum of 170 feet radius from existing installations and other new installations of Franchise Structures. The City is committed to a public review process with respect to such sites that maximizes opportunities for comment.

The Department will adhere to the requirements of Section K. of City Council Authorizing Resolution 2309 of 2009, including, without limitation, the following consultative process in designating new sites for Franchise Structures:

1. The Department will request recommendations and prioritized lists of areas for new sites for Franchise Structures from Council Members, Borough Presidents, Community Boards and Business Improvement Districts (BIDs).
2. The Department will distribute lists of proposed sites determined by the Department to be desirable for a 60-day comment period to Council Members, Borough Presidents, Community Boards, other appropriate City agencies and BIDs. The list of proposed sites will be prominently displayed on the Department's website where the public will be invited to submit their comments.
3. After consideration of the comments the Department will choose final sites and notify Council Members, Borough Presidents, Community Boards, other appropriate City agencies and the Franchisee.

The Department may direct the Franchisee to replace PPTs at existing sites that substantially comply with the siting criteria, independent of the above consultative process.

D. RESPONSE TO COMPLAINTS AND REQUESTS FOR REMOVAL

The Franchisee shall cooperate with the Department in timely responding to any complaints the Department receives concerning the siting, installation or requested removal of Franchise Structures.

SECTION III PROPOSAL PROCEDURES AND REQUIREMENTS

A. PROPOSAL PACKAGE

The Proposal Package shall contain the following:

1. Proposal Cover Sheet

The Proposer shall submit a completed Proposal cover sheet (attached as Appendix 3) transmitting the Proposal Package to the Department. The cover sheet must be signed and dated by an individual authorized to enter into a Franchise Contract with the City on behalf of the Proposer. A separate cover sheet shall be completed and submitted for each firm that is a party to the Proposal, *e.g.*, two firms submitting one Proposal as a joint venture.

2. Statement of Qualifications

The statement of qualifications is a presentation of the qualifications and experience of the Proposer's organization and the staff that will be participating in the Franchise Contract. If applicable, a like statement of qualifications shall be included for each firm that is a party to the Proposal or that will provide services associated with this Franchise, *e.g.*, two firms submitting one Proposal as a joint venture or one firm submitting a Proposal that will require subcontracting on a long-term basis to one or more firms. Proposers do not have to be qualified to do business in New York in order to submit a proposal, but will have to be so qualified in order to enter into a Franchise contract.

At a minimum, the statement of qualifications shall include the following:

2.1 Narrative Proposers must provide information regarding their relevant experience and knowledge of payphones, Wi-Fi, and outdoor advertising media. Each Proposal must include a detailed narrative setting forth the background, experience, and qualifications of the firm(s) and the principals of the firm(s), including a list of previous completed work that is similar or related to that described in the Scope of Services required pursuant to Section II of this RFP. Such information should identify the cities or localities where such services are or have been provided, and should also describe in detail the scope and value of relevant current and past contracts, licenses, franchises and any other agreement. In addition, the Proposer must include information in forms such as video, photographs, etc., to demonstrate its existing structures in operation in other cities or localities. If the proposal is submitted by a partnership or a joint venture, the narrative must detail the role(s) each company will play and the experience and expertise of the team at each company.

2.2 References Proposers must provide the names, phone numbers, and addresses of no fewer than five (5) client references, including at least one reference for each contract or license identified in response to the previous section of this RFP. The Department may request additional references for individual members of the project team, including subcontractors.

2.3 Organization Chart and Team Members Proposers must provide an organization outline or chart identifying the names and titles of project team members, reporting relationships within the project team and a resume or summary of qualifications of each team member, including past performance on similar or related projects, and an explanation of the roles that these individuals will have in the fulfillment of the Franchise Contract.

2.4 Financial Statements Each firm that is a party to the Proposal must submit audited financial statements by an independent registered public accounting firm for its two most recent completed fiscal years. Supporting documentation shall be submitted as requested by the Department.

2.5 Performance Reports If Proposer's existing structures provide Wi-Fi, proposers must provide reports for a recent one-year period showing usage and downtime (each a "Performance Report"). Proposers must also document proactive efforts undertaken to minimize downtime and rapidly address network malfunction.

3. Technical Proposal

3.1 Narrative Each Proposal must include a detailed narrative description of how the Proposer plans to fulfill and, if applicable, exceed the terms and conditions of the Franchise as described in the Scope of Services section (Section II) of this RFP, as well as any commitments to improve design, technology, and/or services during the term of the Franchise Contract. The narrative must describe in detail the Proposer's plans pertaining to design, manufacture, installation, maintenance, and operation of each of the types of Franchise Structures, including proposed time limits for the construction, replacement and relocation of PPTs and including a description of how, technologically, the required Wi-Fi would be provided. A statement of the number of additional installations the proposer is willing to build in the Bronx, Brooklyn, Queens and Staten Island and a statement of the number of non-advertising installations the proposer is willing to build should also be included here. In addition, the narrative must describe the Proposer's plans for administering and marketing the Franchise Structures and the advertising thereon. Each proposal must include a detailed narrative describing how the Proposer plans to provide adequate staffing to operate all aspects of the Franchise. The narrative must also describe the proposed computerized inventory and information-sharing system, including the operating system, details regarding the Software, type of computer, data to be entered, and reports to be made available to the Department. Reduced sized copies of the drawings described in Section 3.2 below may also be included in the narrative.

3.2 Drawings Each Proposal must include color renderings and drawings of each basic design for the Franchise Structures, as described in the Scope of Services section of this RFP. The drawings shall show all proposed amenities, all necessary utility and telecommunications connections and all special features unique to that type of structure. Methods by which each basic design can be varied to suit specific contexts shall be indicated by means of notes and/or additional graphic representations.

The drawings required pursuant to this section shall include the following, drawn to a scale of 1 inch to 1 foot (1:12): dimensioned plan; dimensioned roof plan; dimensioned front, side and rear elevations; and dimensioned transverse and longitudinal sections. In addition, the following detailed drawings are required, drawn to scale as appropriate: construction, including the method of mounting the structure to the sidewalk; structural; mechanical; electrical; and telecommunications.

Maximum drawing size shall be 30 inches by 42 inches. Proposers shall submit two complete sets of drawings mounted on foam-core boards. All dimensions shall be included on the drawings indicating in detail methods of construction and the specific types of materials and

finishes to be used, including colors and textures as applicable. Notes shall also confirm that the designs meet applicable code requirements. All drawings shall bear the seal of a Professional Engineer or Registered Architect licensed by the State of New York. Proposers may be required to submit additional items including perspective drawings, model photographs, and samples of materials, as well as additional sets of drawings (including reproducibles).

3.3 Scale Models Each Proposal must include an accurate, realistic model of each of the two basic designs for the Franchise Structure, constructed at a scale of 1 inch equals 1 foot (1:12). Each model must show the colors and textures of all proposed materials and finishes as realistically as possible.

4. Public Benefit Declaration

4.1 Narrative Each Proposal must include a detailed narrative describing the Franchise's anticipated public benefit. The narrative should clearly state the Franchise's anticipated overall positive economic impact on the City including, but not limited to, the estimated number of local manufacturing jobs that will be created or preserved, the number of sustainable administrative and operational jobs created or preserved, and any ancillary economic benefits resulting from the Franchise.

4.1.1 USA Preference/NYC Preference. If the Proposer intends to manufacture and assemble the Franchise Structures in the United States or in the City of New York, the Proposer shall so state in the narrative. Proposers that manufacture and assemble their Franchise Structures in the United States or in the City of New York shall be granted a preference; proposers will be granted either a USA preference or a New York City preference designation based on the criteria below. Preference will also be given to those Proposers who locate their financial and accounting operations in New York City (if financial and accounting operations are located outside of New York City, the Franchisee will be required to pay for travel and lodging expenses for an auditing team). Any Proposer seeking either preference will state the value of the labor and materials involved in the manufacture and assembly of the Franchise Structures, both in absolute dollars and as a percentage of the overall cost of manufacture and assembly, which the Proposer certifies will be done in the relevant jurisdiction. If the value of labor and materials involved in the manufacture and assembly in the subject locale equals less than eighty percent (80%) of the overall costs, then the Proposer does not qualify for the USA preference. If the value of labor and materials involved in the manufacture and assembly in the subject locale equals less than fifty percent (50%) of the overall costs, then the Proposer does not qualify for the New York City preference. The failure of a Proposer to qualify for either of the above preferences will not preclude further review and evaluation of such Proposer or the award of a Franchise to such Proposer.

5. Cash Flow Analysis

Proposers must submit a detailed cash flow analysis itemizing the revenues and expenses anticipated over the term of the Franchise. A form for the cash flow analysis is provided as Appendix 4. Proposers must complete and submit the form provided in Appendix 4. Additional cash flow analyses may also be provided.

6. Compensation Proposal

The compensation to be paid to the City each year for the rights granted under the Franchise Contract shall be a guaranteed minimum annual amount, or a percentage of any gross revenues derived by the Franchisee as a result of the operation of the Public Communications Structures and the display of advertising thereon, whichever is greater.

The suggested minimum annual compensation for the proposed guaranteed minimum annual amount of compensation for the initial year is twenty million dollars (\$20,000,000).

“Gross revenues” will mean the sum of any and all user fees and any and all revenues obligated to be paid to the Franchisee, its subsidiaries, affiliates, or third parties as a result of the installation, operation, maintenance or removal (temporary or otherwise) of the Franchise Structures and Pre-Existing PPTs irrespective of the Franchisee’s ability to collect the revenues. Proposers must create a separate accounting and commission reporting system for the New York City Franchise to distinguish New York City franchise revenues from those derived from New York State and other state and local jurisdictions.

Gross revenues will include all revenues and will be calculated on the basis of the total amounts contracted for by advertisers, telecommunications service providers, sponsors, and the like, and will include any amount received in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter. Gross revenues will not be subject to any deductions for commissions, brokerage, labor charges, or other expenses.

While the City discourages the bundling of advertising on Franchise Structures with other advertising sales, there may be times when such bundling becomes necessary. In those circumstances the Franchise Structure panels included in the bundle will be valued at the full rate card then in use by the Franchisee.

Proposers must propose (for each year of the franchise term, including the optional renewal term) all of the following: (a) a guaranteed minimum annual amount of compensation; and (b) a percentage of gross revenues to be paid each contract year during the term of the Franchise should the percentage exceed the guaranteed minimum annual amount.

A percentage of net receipts will not be acceptable.

The proposed guaranteed minimum annual amount of compensation may be no less than \$17,500,000 and the percentage of gross revenues may be no less than 50%.

The compensation proposal shall be submitted in a separate, sealed envelope clearly labeled “Compensation Proposal.”

Such compensation shall not be considered in any manner in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatever kind or description that are now or at any time hereafter may be required to be paid pursuant to any local, state, or federal law.

7. Required City Documents

The following documents shall be completed by each firm that is a party to the Proposal or that will provide key, long-term services associated with this Franchise, *e.g.*, two firms submitting one Proposal as a joint venture or one firm submitting a Proposal that will require subcontracting on a long-term basis to one or more firms:

7.1 VENDEX Questionnaires Questionnaires required under the City's Vendor Information System (VENDEX) must be completed by an officer of each business entity that is a party to the Proposal, each principal of every such business entity, and any subcontractors.

7.2 Affirmation The Proposer shall complete and submit the Affirmation attached as Appendix 5 as part of the Proposal Package.

7.3 MacBride Principles The MacBride Principles attached as Appendix 8 will be included in any Franchise Contract entered into by the Department pursuant to this RFP.

7.4 Proposer's Affidavit The Proposer's Affidavit attached as Appendix 10 must be signed and submitted as part of the Proposal Package.

7.5 Doing Business Data Forms Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, proposers are required to complete the attached Doing Business Data Form (see Appendix 11) and return it with this proposal. (If the respondent is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a respondent has failed to submit a Data Form or has submitted a Data Form that is not complete, the respondent will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the respondent has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

8. Acknowledgment of Addenda

The Proposer shall complete and submit the Acknowledgment of Addenda form, attached as Appendix 6, as part of the Proposal Package. This form serves as the Proposer's acknowledgment of the receipt of Addenda that may have been distributed by the Department prior to the Proposal Due Date and Time.

B. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS

1. Delivery

Proposal Packages must be received by the Authorized Agency Contact identified on the cover page of this RFP on or before June 30, 2014 at 5:00 PM EST. Proposals received after the Proposal Due Date and Time are late and shall not be considered.

2. Copies and Format

Proposers shall hand deliver one signed original, five (5) hard copies of the Proposal Package and fifteen (15) USB flash drives (or other media device) including electronic versions of the complete proposal, except that Proposers need provide only two complete sets of the drawings mounted on foam-core boards described in Section 3.2, only one of each of the scale models

described in Section 3.3, and only one original and two copies of the “Required City Documents” described in Section 7.

3. Length of Proposal

Proposers are advised that while there is no page limitation for Proposals, discretion should be used.

4. Labeling

The outer envelope enclosing any materials submitted in response to this RFP shall be addressed as follows:

From: Proposer Name/Address

To: New York City Department of Information Technology and Telecommunications
C/O Wayne Kalish - Franchise Administration Division
2 Metro Tech Center, 4th Floor
Brooklyn, NY 11201

RFP Title: Request for Proposals for a Franchise to install, operate, and maintain Public Communications Structures

PIN: 8582014 FRANCH3

Due Date and Time: **June 30, 2014 at 5:00 PM EST**

5. Delivery Services

Proposers shall be responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the information required in item 4, above, appears on the outer envelope used by such service.

6. Proposal Package Checklist

Appendix 7, Proposal Package Checklist, which itemizes each component/document that is to be submitted as part of the Proposal Package, has been attached for the Proposer's convenience.

C. PROPOSAL EVALUATION PROCEDURES

a) Evaluation Committee

1.1 Proposals shall be evaluated by an Evaluation Committee that shall be comprised of a minimum of three (3) persons qualified to evaluate the components of this solicitation. Members of the Committee will likely include representatives of the Departments of Information Technology and Telecommunications, Transportation, and City Planning. The Evaluation Committee also will have technical advisors who may

include representatives of other public entities such as the Public Design Commission, the Mayor's Office for People with Disabilities, the Landmarks Preservation Commission, the Department of Parks and Recreation, the Police Department, the Fire Department, and the Office of Management and Budget.

1.2 Rating sheets or other written evaluation forms shall be used to evaluate Proposals and shall be signed and dated by all members of the Evaluation Committee reviewing the Proposal. Initial ratings may be amended, and the amended ratings shall be recorded on amended rating sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained as part of the Department's files.

b) Evaluation Procedures

Proposals received in response to this RFP will be reviewed and evaluated in four phases, three phases on a point scale providing for a maximum point total of 150, with points assigned as follows:

Phase I	Pass/Fail
Phase II	25
Phase III	65
Phase IV	55
Preference Points	5

If interviews, presentations, and/or demonstrations are conducted in accordance with Section IV, L, of this RFP, the Evaluation Committee may use any information from those interviews, presentations, and/or demonstrations in evaluating a Proposal.

2.1 Phase 1: Responsiveness Determination

The Department will review each Proposal to ensure that it includes and addresses each item or document required by this RFP. Failure to provide a complete responsive submission may result in the Proposal receiving no further review.

2.2 Phase 2: Assessment of Proposer's Ability to Provide Required Services

Each Proposal that is deemed responsive will be forwarded to the Evaluation Committee for its review. The Committee will examine and evaluate each Proposer's business organization, financial fitness and experience. Each Proposer will receive a numerical score after this Phase. Any proposal receiving a score of less than 10 for this phase will not be further considered.

2.3 Phase 3: Assessment of the Technical Proposals and Public Benefit

The Committee will examine and evaluate the technical proposals of each of the Proposers receiving a score of 10 or more in Phase 2 of the Evaluation Procedures. The factors to be considered by the Committee in Phase 3 include but are not limited to: the

Proposer's plans to fulfill and, if applicable, exceed the terms and conditions of the Franchise as described in Section II of this RFP; any commitments to improve design, technology and/or services during the term of the Franchise Contract; the Proposer's plans pertaining to design, manufacture, installation, maintenance and operation of Franchise Structures, including the Proposer's plan for the replacement of existing PPTs; the Proposer's plans for administering the Franchise, including the Proposer's computerized inventory and information sharing system; and the Proposer's plans for marketing the Franchise Structures and the advertising thereon.

In addition, the Committee will examine and evaluate the public benefit of the proposal including consideration of commitments for additional public service advertising and commitments to create and preserve jobs in the City, and positively impact the economy in the City of New York. Each Proposer will receive a numerical score after this Phase.

2.5 Phase 4: Assessment of the Compensation Package

The Committee will review and evaluate the compensation to be paid to the City proposed by each Proposer receiving a score of 10 or more in Phase 2 of the Evaluation Procedures. Each Proposer will receive a numerical score after this Phase.

2.6 Final Selection

The Committee will total all scores derived from Phases 2, 3, and 4, apply any applicable bonus points, and recommend one or more Proposers who may be invited to enter into negotiations with the City for Best and Final Offers for the Franchise.

c) Evaluation Criteria

The Evaluation Committee will review and evaluate Proposals according to the following criteria:

3.1 Phase 1: Responsiveness Determination

Proposers will either pass or fail this Phase, based on whether or not their Proposals are responsive to the RFP.

3.2 Phase 2: Assessment of Proposer's Ability to Provide Required Services

The following evaluation criteria will be applied:

- a) The Proposer's business integrity and financial experience and capabilities and soundness, including without limitation adequate access to sources of capital and operating funds and the demonstrated ability to maintain books and records adequately.
- b) The Proposer's legal, technical and managerial experience and demonstrated capabilities in the design, installation, operation, and maintenance of public pay telephones and public Wi-Fi in an urban environment.

- c) The Proposer's legal, technical and managerial experience and capabilities in the sale and maintenance of outdoor advertisements in an urban environment.
- d) The legal, technical and managerial skill and capabilities of the Proposer's management, technical staff, and field personnel, including the Proposer's overall staffing plan for the Franchise.

3.3 Phase 3: Assessment of the Technical Proposals and Public Benefit

The following evaluation criteria will be applied:

- a) The designs of the Franchise Structures, including functional efficiency, aesthetics, security, durability, adaptability for various built environments around the City and accommodation for people with disabilities. As stated in Section II.A.2 above, "[p]reference will be given to designs that result in a smaller footprint and/or smaller envelope" than the maximum permitted.
- b) The Proposer's plans for installing, maintaining, and operating the Franchise Structures, including both replacement of Pre-Existing PPTs and plans for additional Franchise Structures (including, without limitation, plans for additional Franchise Structures in the Bronx, Brooklyn , Queens and Staten Island, and non-advertising Franchise Structures for residential areas, as described in Section II. A.3. above). Evaluation in this respect will include, without limitation, evaluation of the degree to which the Proposer's plans regarding placement of installations would enhance the visual esthetic of the streetscape, including the avoidance of excessive clustering of street furniture.
- c) The Proposer's plan for marketing the Franchise Structures and the advertising thereon, including without limitation attention to borough and neighborhood needs and the consideration of both local and national advertisers.
- d) The Proposer's plans for administering the Franchise, including the allocation of resources (*i.e.*, staff, materials, equipment, administrative overhead, etc.) for providing each element of the Scope of Services described in Section II of the RFP.
- e) The Proposer's operational plan to meet or exceed the build-out schedule it has proposed pursuant to this RFP.
- f) The adequacy of the Proposer's Software and computerized information sharing system.
- g) The Proposer's ability to maintain the property of the City in good condition throughout the term of the Franchise.
- h) The Proposer's commitments to improve design, technology, and/or services during the term of the Franchise Contract.
- i) The Proposer's plans to ensure that the public receives the maximum benefits available under the Franchise and that the benefits are shared equitably throughout the City.
- j) The Proposer's plans to create and preserve sustainable local jobs and other public benefits as described in the first paragraph of Section III.4. above.
- k) The Proposer's plans to make available additional public advertising.

- 1) Any other aspects of the Proposal which further the City's management of local rights-of-way activities, plans and goals.

In addition, a preference shall be granted to any Proposal which commits to manufacture and assemble the Franchise Structures in the City of New York in accordance with Section III. A. 4.1 of this RFP; to any Proposal which commits to manufacture and assemble the Franchise Structures in the United States of America in accordance with Section III. A. 4.1 of this RFP. These preferences will be granted in the form of bonus points to be applied to each qualifying Proposer's numerical score from this Phase.

3.4 Phase 4: Assessment of the Compensation Package

The following evaluation criterion will be applied:

The nature, adequacy and value of the proposed compensation to be paid to the City. Matters the City may take into account in assessing the value of a compensation proposal include (1) the use by the City of a discounting methodology appropriate in the City's judgment to assess the present value of future payments proposed by the proposer, and (2) adjustments by the City appropriate in the City's judgment to reflect the respective levels of uncertainty or certainty associated with proposed compensation amounts (so that, for example, percentage of revenue compensation projections may be discounted to a greater or lesser degree revenue based on the lesser or greater confidence that can be assigned to particular revenue projections).

d) Prototype Structures

Proposers should be aware that prior to awarding the Franchise Contract, the Department may require the selected Proposer to provide and install prototypes of each Franchise Structure proposed at a location within the City of New York which will be designated by the Department. If such prototypes are requested, failure to provide prototype structures that meet with the approval of the Department may be grounds for the Department to select another Proposer.

**SECTION IV
GENERAL INFORMATION**

A. STATUS OF INFORMATION

1. The Department shall not be bound by any oral or written information released prior to the issuance of the RFP.

2. The Department shall not be bound by any oral or written representations, statements or explanations other than those made in this RFP, in Department-written responses to Proposer inquiries or in a formal written addendum to this RFP.

B. COMMUNICATION WITH THE DEPARTMENT

Proposers are advised that from the date this RFP is issued until the award of the Franchise Contract, no contact with Department personnel related to this solicitation is permitted, except as shall be authorized by the Authorized Agency Contact.

Proposers are hereby directed that from the date this RFP is issued until the award of the Franchise contract, they and their key people as defined in Appendix 10, consultants, agents or representatives, lobbyists or lawyers are not to contact any employee in any City agency, other than the Authorized Agency Contact, with regard to this RFP or any addenda thereto.

Each proposer shall sign a Proposer's Affidavit regarding contact with the Department that is attached as Appendix 10. The affidavit shall be submitted with the proposal package. Failure to complete the affidavit may result in the proposal being disqualified as not responsive.

C. PROPOSER INQUIRIES

1. All inquiries regarding this solicitation shall be submitted in writing to the Authorized Agency Contact, who shall respond in writing to all potential Proposers.

2. Proposers are advised that the Department cannot ensure a response to inquiries received later than ten (10) calendar days prior to the Proposal Due Date.

D. ADDENDA TO THE RFP

1. The Department shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP it deems necessary prior to the Proposal Due Date in the form of written addenda.

2. It is the Proposer's responsibility to assure receipt of all addenda by verifying with the Authorized Agency Contact prior to submitting a Proposal that all addenda have been received. Proposers shall acknowledge the number of addenda received as part of their Proposals on the Acknowledgment of Addenda form (Appendix 6).

E. PRE-PROPOSAL CONFERENCE

1. A Pre-proposal Conference will be held on **May 12, 2014**. The conference will be conducted by Department personnel to assist Proposers in understanding the RFP and Franchise requirements. Nothing stated at the conference shall change this RFP unless the change is made in writing in addenda issued by the Authorized Agency Contact. A written summary of the Conference, including the names and affiliations of all attendees, shall be maintained by the Department in its files. Attendance at the Pre-proposal Conference is strongly recommended, but is not mandatory.

2. Questions about the RFP should be submitted in writing to the Authorized Agency Contact at least one week prior to the Conference.

3. Proposers should notify the Authorized Agency Contact of whom, if anyone, will represent their company at the Conference at least one week in advance. The Authorized Agency Contact will provide specific scheduling and location information.

4. If any Proposer needs a sign language interpreter or other special accommodation for the Pre-proposal Conference, they must request such accommodation from the Authorized Agency Contact no later than 24 hours before the scheduled date.

F. LOCATION LISTINGS

1. Proposers may request from the Authorized Agency Contact a list of the locations of all existing PPTs. The locations may also be found on the web by visiting the City's Open Data Portal at www.nyc.gov/data and entering "*Public Pay Telephones*" in the search box.

2. Proposers are advised to visit a substantial number of these locations to become familiar with the wide variety of built contexts and topographical conditions in which the Franchise Structures will be located.

G. MODIFIED PROPOSALS

1. A Proposer may submit a modified Proposal to replace all or any portion of a previously submitted Proposal until the Proposal Due Date and Time and, if applicable, until the due date and time set for the submission of Best and Final Offers, if Best and Final Offers are required by the Department.

2. The Evaluation Committee shall consider only the latest timely version of the Proposal.

H. WITHDRAWAL OF PROPOSALS

A Proposal may be withdrawn only in writing and only prior to the Proposal Due Date and Time or, if applicable, until the due date and time set for the submission of Best and Final Offers.

I. LATE PROPOSALS AND MODIFICATIONS

Proposals, modifications and, if applicable, Best and Final Offers received after the applicable due date and time are late and shall not be considered.

J. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

1. The Department will endeavor to protect from disclosure any confidential and/or proprietary information of the Proposer submitted to the Department pursuant to this RFP in accordance with applicable law, provided that the Proposer shall specifically identify those portions of the Proposal deemed to be confidential, proprietary information or trade secrets.

2. Such information deemed by the Proposer to be confidential and/or proprietary shall be easily separable from the non-confidential/non-proprietary sections of the Proposal. Marking the entire Proposal as confidential or proprietary will result in the Proposal being rejected and returned to the Proposer unread.

3. Proposers should be aware that the Department may be required, pursuant to the New York State Freedom of Information Law (“FOIL”) (New York Public Officers Law Section 87 *et seq.*), to disclose to the public a written Proposal or portion thereof submitted in connection with this RFP. In the event that such disclosure is requested by a third party, the Department will provide notice to the Proposer as far in advance as practicable of any deadline for response and shall consult with the applicant to evaluate the extent to which such information may be withheld from disclosure under provisions of FOIL. Consistent with the requirements of FOIL, the final determination whether such information may be withheld from disclosure shall be made by the Department. In the event that the Department determines that information may not be withheld, the Department will attempt to provide the Proposer with timely notice of intent to disclose in order that the Proposer may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

4. Proposers expressly acknowledge and agree that neither the Department nor the City of New York will have any obligation or liability to any Proposer in the event of disclosure of materials designated as confidential or proprietary.

K. COSTS INCURRED BY PROPOSERS

The Department shall not be liable for any costs incurred by Proposers in the preparation of Proposals or for any work performed in connection therewith.

L. SUPPLEMENTAL INFORMATION, PRESENTATIONS, AND DEMONSTRATIONS

1. The Department may require Proposers to submit supplemental or explanatory information regarding their Proposals.

2. The Department may require Proposers to attend interviews, to give oral or visual presentations in support of their Proposals or to exhibit or otherwise demonstrate the information contained therein.

M. NEGOTIATIONS, BEST AND FINAL OFFERS

1. The Department reserves the right to award a Franchise Contract on the basis of initial offers received, without negotiation. Therefore, each initial offer should contain the Proposer's best terms from a programmatic and cost standpoint.

2. The Department reserves the right to enter into negotiations with one or more Proposers and subsequently to request the submission of Best and Final Offers from those Proposers who, after the conclusion of such negotiations, are still under consideration for award. No Proposer shall have any rights against the Department arising from an invitation to enter into negotiations or to submit a Best and Final Offer.

N. PROPOSER ACCEPTANCE OF RFP AND FRANCHISE PROVISIONS

Submission of a Proposal signifies to the Department the Proposer's intention to compete for the award of the particular Franchise Contract. By submitting a Proposal, Proposers understand and accept that at a minimum the terms and conditions specified in this RFP, in Resolution No. 2309 adopted by the New York City Council on December 21, 2009 and Resolution No. 191 adopted by the New York City Council on August 25, 2010, and in the Investigation Clause attached as Appendix 9 will become part of any Franchise granted.

O. FRANCHISE CONTRACT AWARD

1. A non-exclusive Franchise Contract will be issued, if at all, to the responsible Proposer who submits the most beneficial Proposal in the interest of the City and who demonstrates the required skills and resources for the service required by the Franchise Contract. The City reserves the right to reject any and all Proposals in the best interests of the City.

2. Pursuant to the New York City Charter the Franchise Contract award will not take effect until the following have occurred:

- a) The proposed contract is the subject of a public hearing; and,
- b) The proposed contract is approved by the Franchise and Concession Review Committee; and,
- c) The contract receives the separate and additional approval of the Mayor; and,
- d) The contract is registered with the Comptroller.

3. Contract award is subject to all required approvals, applicable provisions of federal, state and local laws and executive orders, rules or regulations in effect.

P. DETERMINATION OF PROPOSER RESPONSIBILITY

1. A Franchise Contract will be awarded only to a responsible Proposer. Factors that are considered in making a determination of responsibility include, but are not limited to: financial resources; technical qualifications; experience; organization, material, equipment, facilities and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with the Franchise Contract requirements, taking into consideration other business commitments; satisfactory record of performance; satisfactory record of business integrity; VENDEX information; and administrative (*e.g.*, record of past performance) and other appropriate information.

2. A Franchise Contract may not be issued to any Proposer who is in arrears or default upon any debt, contract, obligation, or taxes to the City of New York. In addition, a Franchise Contract may not be issued to any Proposer until all outstanding adjudicated fines and/or liens owed to the City of New York are paid in full.

3. After the opening of the Proposals, a Proposer may be asked to submit sworn statements and supporting documentation setting forth such information as the Committee may require including, but not limited to, the Proposer's financial condition, present and proposed plant and equipment, the personnel and qualifications of its working organization, prior experience and performance record.

4. Failure of a Proposer to provide information specifically requested by the Committee may be grounds for a determination of non-responsibility. If a Proposer who otherwise would have been awarded a Franchise Contract is found non-responsible, a written determination of non-responsibility setting forth in detail and with specificity the reasons for the finding of non-responsibility will be immediately sent to the non-responsible Proposer.

Q. RFP POSTPONEMENT/CANCELLATION

The Department reserves the right to postpone or cancel this RFP and to reject any and all Proposals at any time.

R. COMPLAINTS

The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

APPENDIX 1
AUTHORIZING RESOLUTIONS

THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 2309

CITYWIDE

20105211GFY

Authorizing Resolution for the granting of franchises for the installation of public pay telephones and associated equipment on, over, and under the inalienable property of the City (L.U. No. 1282).

By Council Members Katz and Avella:

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications (the "Department") as the responsible agency for the granting of telecommunications franchises; and

WHEREAS, pursuant to Section 363 of the Charter (the "Charter") of the City of New York (the "City"), the Commissioner of the Department of Information Technology and Telecommunications (the "Commissioner") has made the initial determination of the need for franchises for public pay telephone service in the City of New York; and

WHEREAS, pursuant to Section 1072 of the Charter, the Department has proposed an authorizing resolution for franchises for public pay phones in the City of New York;

The Council hereby resolves that:

A. The Council authorizes the Department, or any successor thereto, to grant non-exclusive franchises for the installation of public pay telephones and associated equipment on, over and under the inalienable property of the City.

B. "Public pay telephone" shall be defined as set forth Section 23-401(f) of the Administrative Code of the City of New York (the "Code") or any successor provision thereto.

C. For purposes of this resolution, "inalienable property of the City" shall mean property designated as inalienable in Section 383 of the Charter.

D. For purposes of this resolution, "Street" shall be defined by subdivision 13 of Section 1-112 of the Code, or any successor provision thereto.

E. The public service to be provided pursuant to this resolution shall be public pay telephone service.

F. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the "Expiration Date"). No franchises shall be granted pursuant to this resolution by the Department, nor approved by the Franchise and Concession Review Committee or the Mayor, after the Expiration Date.

G. Prior to the grant of such a franchise, a Request For Proposals (“RFP”) or other solicitation shall be issued by the Department or any successor thereto. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with the New York State Environmental Quality Review Act (“SEQRA”), the regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq., the City Environmental Quality Review process (“CEQR”) (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York), and Section 197-c of the Charter.

H. Any such RFP or other solicitation shall contain siting criteria (the “criteria”) which shall be utilized by the Department in approving or designating locations for the placement of public pay telephones and associated equipment on, over and under the inalienable property of the City. Said criteria shall address, but shall not be limited to, the following factors to the extent permitted by law:

- (1) proximity to water, sewer, electrical or other pipes, conduits or other structure(s);
- (2) visual impacts, if any, on vehicular traffic;
- (3) proximity to other existing structures including but not limited to traffic lights, traffic and other signs, newsstands, fire hydrants, underground vaults, bus stop shelters, public pay toilets, enclosed and unenclosed sidewalk cafes, building entrances and exits, and curb cuts; (provided that in no event shall a pedestal or other structure which holds one or more public pay telephones be located less than fifty (50) feet from any other such pedestal or structure on any one “block”(the term “block” being defined as that portion of the sidewalk on one side of a street which is between the lot line and the curb and which is between two points, each of which is ten (10) feet from the corner of said street and its intersecting street, in conformity with the City’s sidewalk corner clearance policy generally);
- (4) adequate sidewalk clearance to assure reasonable pedestrian flow;
- (5) whether the proposed location is adjacent to a curb or adjacent to a building or other structure; and
- (6) impacts, if any, on landmarks or historic districts so designated by the Landmarks Preservation Commission (“LPC”) or any successor thereto.

In no event however, shall the Department include any criteria in any such RFP or other solicitation which the City would be preempted, pursuant to federal law, from thus including; and in no event shall the Department apply any criteria to be included in any such RFP or other solicitation in a manner which the City would be preempted, pursuant to federal law, from thus applying.

I. The criteria to be used by the Department to evaluate responses to any such RFP or other solicitation shall, include, but not be limited to, the following, if and to the extent permitted by law:

- (1) the financial, legal, technical and managerial experience and capabilities of the applicant(s);
- (2) the adequacy and nature of the proposed compensation to be paid to the City; and
- (3) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise.

In no event however, shall the Department include any criteria in any such RFP or other solicitation which the City would be preempted, pursuant to federal law, from thus including; and in no event shall the Department apply any criteria to be included in any such RFP or other solicitation in a manner which the City would be preempted, pursuant to federal law, from thus applying.

J. Any franchise granted pursuant to this resolution shall be by written agreement and shall include, but not be limited to, terms and conditions consistent with the following to the extent permitted by law (provided however, that no term or condition, whether or not listed hereinafter, shall be included in a written franchise agreement if the City is preempted, by federal law, from including such a term or condition in such agreement, and provided that no term or condition, whether or not listed hereinafter, shall be included in a written agreement in a form or manner which the City is preempted by federal law from using with respect to such agreement):

- (1) The term of such franchise shall not exceed fifteen (15) years.
- (2) The compensation paid to the City shall be adequate and shall not be considered in any manner to be in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatsoever kind and description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City, law of the State of New York, or law of the federal government.
- (3) Such franchise may be terminated or canceled by the Department in the event of a franchisee's failure to comply with the terms and conditions of this agreement.
- (4) Such franchise shall include provisions for the franchisee to provide security to the City securing the performance of the franchisee's duties and obligations.
- (5) The City shall have the right to inspect the facilities of the franchisee that are located on the City's inalienable property and to order the relocation or removal of such facilities at the direction of the Department.
- (6) There shall be requirements for adequate insurance and indemnification to protect the interests of the public and the City.
- (7) The franchisee shall be required to maintain complete and accurate records and books of account that shall be made available for audit by the City for the purpose of auditing performance of the franchisee's duties and obligations under such franchise.
- (8) There may be provisions to allow the franchisee to sell or lease advertising space on its public pay telephones, but in no event shall such advertising be permitted in zoning districts other than commercial and/or manufacturing zoning districts (defined as zoning

districts where commercial and/or manufacturing uses are permitted as of right), and provided that in the event that a franchise authorizes such advertising the franchisee shall require that prior to the installation of any such advertising, the franchisee shall (i) submit to the Commissioner a list of each location where advertising is sought to be sold or leased; (ii) indicate the zoning designation for each such location; and (iii) certify, in writing, that each location complies with the zoning district requirements of this paragraph (8).

(9) In the event that a franchisee is authorized to, and does, sell or lease advertising space on its public pay telephones, then: (i) advertising for tobacco products shall be prohibited; (ii) there shall be a requirement for the provision of free advertising space for public service announcements, (iii) said space for public service announcements shall represent at least two percent (2%) of total advertising space; (iv) the Department shall be responsible for informing all agencies of City government of such free advertising space for public service announcements; and (v) in order to ensure wide and fair distribution of such free advertising space, the Department shall maintain and implement a plan for coordinating requests by said agencies for use of such space.

(10) There shall be provisions requiring that all work involved in the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment and facilities of the franchisee on, over and under the inalienable property of the City shall be performed in a safe, thorough and reliable manner using materials of good and durable quality and that such work will be done in accordance with any rules promulgated under Section 23-403 of the Code (or any successor provision thereto) in relation thereto; additionally, the installation of public pay telephones on distinctive sidewalks shall be prohibited.

(11) The franchisee shall comply with all applicable sections of the buildings and electrical codes of the City of New York and, where the nature of any work to be done in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of such public pay telephones and associated equipment on, over and under the inalienable property of the City requires that such work be done by an electrician, the franchisees shall employ and utilize only licensed electricians.

(12) There shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters.

(13) There shall be provisions requiring the franchisee to comply with all applicable City, state and federal laws, regulations and policies.

(14) There shall be provisions to ensure the adequate oversight by the City of the franchisee's performance of its obligations under such franchise.

(15) There shall be provisions to restrict the assignment or other transfer of such franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City.

(16) There shall be provisions to require the franchisee to comply with the applicable provisions of the Americans with Disabilities Act and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities, and at least twenty-five (25) percent of each franchisee's telephones shall be equipped with volume control equipment to enable hearing impaired persons to access and utilize telecommunications services (such volume control-equipped telephones to be distributed reasonably evenly among the telephones installed by the franchisee).

(17) There shall be remedies to protect the City's interests in the event of the franchisee's failure to comply with the terms and conditions of the agreement.

(18) There shall be provisions to protect the City's interest in the event of the subsequent invalidity of any portion of the agreement and in the event of any change in applicable law.

(19) The franchisee shall have been subject to, prior to commencement of the term of such franchise, review pursuant to the City's Vendor Information Exchange System ("VENDEX") or any successor system.

(20) The franchisee shall obtain all necessary licenses and permits from and comply with all rules and regulations of the New York State Public Service Commission, the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee.

(21) The franchisee shall obtain the permit(s) required by Section 23-402 and defined by Section 23-401(d) of the Code, or any successor provision thereto, and the fees paid to obtain said permits shall not be considered in any manner to be compensation or in the nature of a tax.

(22) The franchisee shall establish and maintain prompt and efficient complaint handling procedures.

(23) There shall be provisions for inspecting and cleaning the public pay telephones and associated equipment and for the prompt removal of graffiti, which inspection, cleaning and graffiti removal shall occur a minimum of two times per month.

(24) The franchisee shall establish and maintain a program, accessible by the City, to monitor the operability of its equipment at all times at all locations.

(25) In the event of an outage, the source of which is under the direct control of the franchisee(s), the franchisee(s) shall be required to restore service within twenty-four (24) hours at all locations so affected, and if the source of the outage is not under the direct control of the franchisee(s) then the franchisee(s) shall notify the responsible party and the Commissioner within twenty-four (24) hours.

(26) The franchisee shall ensure that not more than ten percent (10%) of its public pay telephones are out of service at any given time.

(27) There shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to such franchise.

(28) There shall be provisions requiring the franchisee to protect the property of the City and the delivery of other public services from damage or interruption of operation resulting from the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment or facilities related to the franchise.

(29) There shall be provisions designed to minimize the extent to which the public use of the streets of the City is disrupted in connection with the installation, construction, operation, maintenance, repair, upgrade, removal or deactivation of the equipment and facilities related to such franchise.

(30) There shall be provisions requiring that emergency calling to the 911 emergency number, to the certified operator service provider and to any other appropriately authorized emergency access number be in accordance with the rules and regulations promulgated by the New York State Public Service Commission.

(31) There shall be a provision, consistent with such regulations as have been or may be promulgated by the New York State Public Service Commission, requiring that each public pay telephone clearly and legibly (i) identify the owner and/or operator of such public pay telephone, (ii) indicate that the owner and/or operator has been franchised by the City of New York and (iii) provide such telephone numbers as may be required by the Department where complaints regarding the telephone may be directed.

(32) There shall be provisions incorporating the MacBride Principles.

K. The Department shall maintain a process for consultation with Council Members and Community Boards with respect to the siting of public pay telephones on the Streets and complaints regarding same including requests for removal and relocation. This process shall include, but not be limited to:

(1) allowing Council Members and Community Boards to submit to the Department a prioritized list of areas requiring additional service, reduced service, or a change in service;

(2) requiring the Department to make available for public review proposed locations for new public pay telephones on the Streets; and

(3) requiring the Commissioner to respond in writing to complaints and requests received from Council Members and Community Boards regarding installation, change of service, removal or relocation of public pay telephones on the Streets pursuant to the Commissioner's authority under the Code.

L. The Department shall file the following documents with the Council:

(1) within fifteen (15) days of filing or receipt, a copy of all documents, including but not limited to forms, applications, reports and correspondence, regarding SEQRA, CEQR and ULURP;

(2) within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this

resolution;

(3) within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution and any subsequent modification thereof; and

(4) on or before July 1 of each year, for the preceding calendar year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution.

M. This Resolution repeals and replaces in their entirety Resolution No. 1043 of 2003 and Resolution No. 502 of 2004.

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on December 21, 2009, on file in this office.

City Clerk, Clerk of The Council

THE COUNCIL OF THE CITY OF NEW YORK

RESOLUTION NO. 191

CITYWIDE

20105618GFY

Proposed authorizing resolution submitted by the Mayor pursuant to Section 363 of the Charter for the granting of franchises for installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services.

By Council Member Comrie (by request of the Mayor):

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications as the responsible agency for the granting of telecommunications franchises; and

WHEREAS, pursuant to Section 363 of the Charter ("the Charter") of the City of New York ("the City"), the Commissioner of the Department of Information Technology and Telecommunications has made the initial determination of the need for franchises for installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services, and has prepared a proposed authorizing resolution for the granting of such franchises; and

WHEREAS, the Mayor has submitted to the Council a proposed authorizing resolution for the granting of such franchises pursuant to Section 363 of the Charter; and

WHEREAS, the Council has determined that it is appropriate to authorize the granting of such franchises as described hereinafter;

The Council hereby resolves that:

- A. The Council authorizes the Department of Information Technology and Telecommunications to grant non-exclusive franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City to be used in providing mobile telecommunications services in the City of New York.
- B. For purposes of this resolution, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter.
- C. For purposes of this resolution, "mobile telecommunications services" shall mean any "mobile service", as defined in Section 153 of Title 47 of the United States Code, and other voice and/or data communications or information services employing electromagnetic waves propagated through space to serve portable sending and/or receiving equipment.
- D. The public services to be provided under such franchises shall be mobile telecommunications services.
- E. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the "Expiration

Date"). No franchises shall be approved pursuant to this resolution by the Department of Information Technology and Telecommunications, the Franchise and Concession Review Committee, or the Mayor pursuant to this resolution after the Expiration Date.

F. Prior to the grant of any such franchise, a Request For Proposals ("RFP") or other solicitation shall be issued by the Department of Information Technology and Telecommunications. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with City Environmental Quality Review ("CEQR") and Section 197-c of the Charter. The distribution list for each such RFP or other solicitation shall include, without limitation, certified minority owned business enterprises and certified women owned business enterprises as defined in Section 1304 of the City Charter. The criteria to be used by the Department of Information Technology and Telecommunications to evaluate responses to such RFPs or other solicitations shall include, but not be limited to, the following to the extent permitted by law:

(1) the adequacy of the proposed compensation (which may include monetary and/or in-kind compensation, as provided in the applicable RFP or other solicitation) to be paid to the City for the use of City property;

(2) the ability of the respondent(s) to maintain the property of the City in good condition throughout the term of the franchise;

(3) the consistency of the response(s) to the City's management of local rights-of-way activities, plans and goals.

In no event, however, shall the Department of Information Technology and Telecommunications include any criteria in any such RFP or other solicitation which the City would be preempted, pursuant to federal law, from thus including; and in no event shall the Department of Information Technology and Telecommunications apply any criteria to be included in any such RFP or other solicitation in a manner which the City would be preempted, pursuant to federal law, from thus applying.

G. Any franchise granted pursuant to this authorizing resolution shall be by written agreement which shall include, but not be limited to, the following terms and conditions to the extent permitted by law (provided, however, that no term or condition, whether or not listed hereafter, shall be included in a written franchise agreement if the City is preempted, by federal law, from including such a term or condition in such agreement, and provided that no term or condition, whether or not listed hereafter, shall be included in a written franchise agreement in a form or manner which the City is preempted by federal law from using with respect to such agreement):

(1) the term of the franchise, including options to renew if any, shall not exceed fifteen (15) years;

(2) the compensation to be paid to the City shall be adequate and may include monetary or in-kind compensation or both;

(3) the franchise may be terminated or cancelled in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;

(4) a security fund shall be established to ensure the performance of the franchisee's obligations under the agreement;

(5) the City shall have the right to inspect the facilities of the franchisee located on the inalienable property of the City and to order the relocation of such facilities as appropriate at the direction of the applicable agency;

(6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;

(7) there shall be provisions to ensure access by the City to books and records of the franchisee as necessary or appropriate to review and/or enforce compliance with the franchise agreement;

(8) there shall be provisions to ensure quality workmanship and construction methods in the use of the inalienable property;

(9) there shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters;

(10) there shall be provisions requiring the franchisee to comply with City laws, regulations and policies related to, but not limited to, employment, purchasing and investigations;

(11) there shall be provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City;

(12) there shall be remedies to protect the City's interest in the event of the franchisee's failure to comply with the terms and conditions of the agreement;

(13) all franchisees shall be subject to review under the City's Vendor Information Exchange System ("VENDEX");

(14) franchisees shall be required to hold any applicable licenses and permits required by the New York State Public Service Commission and the Federal Communications Commission;

(15) there shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to the franchise;

(16) there shall be provisions requiring the franchisee to protect the property of the City, and the delivery of public services that utilize the property of the City, from damage or interruption of operation resulting from the construction, operation, maintenance, repair or removal of facilities, equipment or other improvements related to the franchise;

(17) there shall be provisions designed to minimize the extent to which the public use of the streets of the City are disrupted in connection with the construction of improvements relating to the franchise;

(18) there shall be provisions requiring that prior to installation of a wireless antenna on any pole (whether City or utility-owned) on a City street which pole is less than ten (10) feet from an existing building, DoITT will provide not less than fifteen (15) business days notice of, and opportunity to submit written comment regarding, such proposed installation to the Community Board in whose community district such building lies (for purposes of this provision, the distance from a pole to a building shall be measured by the distance from the base of the pole facing the building to the building line);

(19) there shall be provisions that offer incentives to the franchisee to serve areas beyond the core business districts of Manhattan south of 96th Street

(20) there shall be provisions requiring the franchisee to (i) comply, on an on-going basis, with respect to any facilities installed by the franchisee within the City's public rights-of-way, with FCC maximum permitted levels of radio frequency energy exposure (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), (ii) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of such facilities (taking into account the actual conditions of human proximity to such facilities), and (iii) at the direction of the City, pay the costs of testing such facilities for compliance with the preceding clauses (i) and (ii); and

(21) there shall be provisions designed to encourage the franchisee, in selecting contractors who will perform work affecting City facilities, to choose entities that are also "Contractors" as that term is defined in Section 6-129 of the Administrative Code (which section is titled "Participation by minority-owned and women-owned business enterprises and emerging businesses s enterprises in city procurement").

K. The Department of Information Technology and Telecommunications shall file with the Council the following documents:

(1) within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;

(2) simultaneously with each notice to an applicable Community Board pursuant to Section G.(1) above, a copy of such notice shall be sent to the City Council member in whose Council district the building that is the subject of such notice lies;

(3) within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution; and

(4) on or before July 1 of each year, a report detailing the revenues received by the City during the preceding calendar year from each franchise granted pursuant to this resolution.

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on August 25, 2010, on file in this office.

City Clerk, Clerk of the Council

APPENDIX 2 SITING CRITERIA

The general provisions contained in this Appendix apply to all Franchise Structures including those replacing Pre-Existing PPTs.

A. General Provisions

1. Clear Path. All Franchise Structures shall be installed so as to allow a minimum of 8 feet or one half of the sidewalk, whichever is greater, of straight unobstructed path (“clear path”) for pedestrian circulation on the sidewalk. No grates or cellar doors shall be included as a part of the clear path directly in front of or behind a Franchise Structure.
2. Sight Lines. The placement of the Franchise Structures shall not interfere with pedestrian or motorist sight lines necessary for traffic safety.
3. Minimum Distance Requirements. Unless otherwise stated, distances shall be measured between the nearest points, viewed in plan, of the Franchise Structure and the specified object or element. Where a distance is required to be measured parallel to the curb line, the measurement shall be taken between the two lines perpendicular to the curb line, one touching the Franchise Structure and the other touching the specified object or element, that are closest to each other. Minimum distances shall be required between the Franchise Structure and specified elements or objects as detailed in Title 67, Chapter 6 of the Rules of the City of New York. To view the existing siting and clearance requirements please visit: http://72.0.151.116/nyc/rcny/Title67_6-41.asp. Reference to clearance from bus stops in said rules shall also apply (at a minimum) to clearance from any bus stop shelters associated with such bus stops. In addition to the requirements stated in the rules, in no event shall the new Franchise Structures and Pre-Existing PPTs be allowed within the following:
 - a) 15’ of an outdoor or elevated subway entrance
 - b) 15’ of street furniture with advertisement panel
 - c) 15’ radius of a fire hydrant
 - d) 15’ of an enclosed sidewalk café
 - e) 5’ of standpipe or sprinkler connection, siamese connection, etc.
 - f) 10’ of a driveway
4. Vaults. Where a vault is present, the Franchisee shall submit certification from an engineer that the installation of the Franchise Structure will in no way damage the vault.
5. Electrical Sources. Franchise Structures should be as close as possible, subject to all other distance requirements, to the source of electricity, if required for the operation of the Franchise Structure (and to any other pipes, conduits or similar structures that may be required for such operation). Such Franchise Structures that require an external electric power source may not be sited farther than 150 feet from the nearest available electric power source, unless otherwise directed by the City. The Franchisee is prohibited from using a traffic signal or Con Edison type #12 post, or any power source across a major or protected roadway, unless authorized to do so by the Department.

6. Landmarks and Historic Districts. The placement of the Franchise Structures in Historic Districts will be subject to the rules of the Landmarks Preservation Commission. No new Franchise Structure shall be erected parallel to a landmark site.

B. Special Circumstances

The Commissioner may waive or modify the above criteria in specific cases, except where prohibited by law, if, in his or her opinion, such waiver or modification is consistent with the public health, safety and general welfare. No such waiver or modification shall be granted without prior consultation with the affected Council Member, Borough President, and Community Board. Similarly, the Department may refrain from authorizing the siting of a Franchise Structure at a particular location that in the opinion of the Commissioner would result in an over-concentration of Franchise Structures.

Notwithstanding anything contained herein, the siting of Franchise Structures shall be subject to any applicable requirements of the New York City Administrative Code.

**APPENDIX 3
PROPOSAL COVER SHEET**

1. Name of Proposer:			
2. Address:			
STREET			
CITY	STATE	ZIP	COUNTRY
3. Telephone:			
4. Fax:			
5. Employer ID# (EIN) or Social Security Number:			
6. Contact Person:			
7. Title:			
8. Telephone:			
9. Fax:			
10. Name of Person Completing Proposal:			
11. Title:			
12. Signature of Person Completing Proposal:			

CERTIFICATION BY CORPORATE OFFICER OR PARTNER

I hereby certify that I have reviewed the attached Proposal and that the information presented therein is accurate and complete as of this date.

Signature: _____

Name: _____

Title: _____

Date: _____

A SEPARATE COVER SHEET MUST BE COMPLETED AND SUBMITTED FOR EACH FIRM THAT IS A PARTY TO THE PROPOSAL.

**APPENDIX 4
CASH FLOW ANALYSIS**

Proposers must use this form to submit the cash flow analysis required in Section [X]. Additional cash flow analyses may also be provided.

State all costs in thousands of US dollars. Do not increment for inflation. Attach additional sheets and provide footnotes as needed.

I. REVENUE ESTIMATES

Table A—Projected Revenue by Type of Franchise Structure

	ITEM	AMOUNT
1	Projected Average Annual Ad Revenue Per Ad Panel Citywide	
2	Projected Average Annual Corporate Sponsorship Revenue Per Franchise Structure Citywide	
3	Projected Average Annual User and Other Fees Per Franchise Structure Citywide	
4	Other Revenue (specify):	

Table B—Number of Franchise Structures in Service in Each Year

Complete Table B as per the Proposal. For the purposes of this analysis, assume that the maximum number of Public Communications Structures will be 10,000.

Year	1	2	3	4	5	6	7	8	9	10-15
FS										

Table C—Projected Total Number of Ad Panels in Service in Each Year

For the purposes of this analysis, assume that there will be 2 ad panels on each PCS.

In Table C, below, provide the total number of ad panels that will be in service and producing revenue for all Franchise Structures in each year. Assume that an ad panel will begin producing revenue in the year after the construction of the appurtenant Franchise Structure (see Table K). For the purposes of this table, deduct 5% of the total number of ad panels for each type of Franchise Structure required as the City’s set aside for public service advertisements.

Year	1	2	3	4	5	6	7	8	9	10-15
FS										

II. ANNUAL OPERATING AND OVERHEAD EXPENSES

Table D— Annual Maintenance Expenses

For the purposes of this analysis, assume that the build-out of the Franchise Structures has been completed. Answer all questions in full regardless of whether these operations will be performed by the Proposer’s employees or by subcontractors.

	ITEM	AMOUNT
1	Yearly projected costs for all maintenance staff (including salaries, benefits/unemployment insurance) to perform cleaning, posting, repair and replacement of parts, electrical and plumbing work, etc.	
2	Yearly projected maintenance vehicle costs (including purchase/lease, fuel, insurance, maintenance/repair, etc).	
3	Yearly projected electricity costs (including alternative power sources)	
4	Yearly cost for replacement parts for all franchise structures	
5	Other maintenance costs (specify):	
6	Maintenance Subtotal (Add Lines 1 through 7)	

Table E -- Cost of Removal of Structures

List the removal cost for a single structure.

Type	\$ Amount
FS	

Table F --Maintenance Expenses, Year by Year

For the purposes of this analysis, assume that maintenance expenses will not reach the total from Table E until the build-out of the Franchise Structures has been completed.

Year	1	2	3	4	5	6	7	8	9	10-15
Am't										

Table G—Annual Overhead Expenses

For the purposes of this analysis, assume that the build-out of the Franchise Structures has been completed. Answer all questions in full regardless of whether these expenses will be incurred by the Proposer or by its subcontractors.

	ITEM	AMOUNT
1	Projected yearly cost for the use and maintenance of all necessary facilities (office, plant, storage facility, garage, utilities, etc.)	
2	Projected yearly cost for office supplies	
3	Projected yearly cost for office staff (including salaries, benefits/unemployment insurance) to perform in-house marketing, clerical, sales, accounting, administration, legal functions, etc.	
4	Commissions. Anticipated fees for an agency to place ads. (Include here and not on line 3).	
5	Other overhead (explain):	
6	Overhead expenses subtotal (Add Lines 1, 2, 3, 4 & 5)	

Table H—Overhead Expenses, Year by Year

Complete this table only if overhead expenses are expected to vary until the build-out of the Franchise Structures has been completed.

Year	1	2	3	4	5	6	7	8	9	10-15
Am't										

III. CAPITAL COSTS**Table I – Capital Costs of Franchise Structures**

1	Manufacture and assembly of one PCS	
2	Installation of one PCS (including permits, utility hook-ups, labor, delivery, set-up)	
3	Other costs (specify)	
4	Unit costs (add lines 1 through 3)	
5	Proposed number of PCSs (4500 minimum)	
6	Total construction cost for PCSs (line 4 x line 5)	

Table I—Construction Schedule

List the number of Franchise Structures proposed to be installed in each year.

Year	1	2	3	4	5	6	7	8	9	10-15	Total
FS											

Table J—Capital Costs, Year by Year

Calculate the capital costs for each year by multiplying the unit cost for each type of Franchise Structure (from Table J) by the number of Franchise Structures to be constructed in each year (from Table K). Do not include financing costs.

Year	1	2	3	4	5	6	7	8	9	10-15
FS										

Table K--Summary and Cash Flow Analysis

Complete this table based on the previous tables.

Table K, below, to be based on control of 97.5% of the advertising space.

	Year	1	2	3	4	5	6	7	8	9	10-15	Subtotal
Revenue Estimates												
A. FS Ad revenue												
Operating Expenses												
Maintenance Expenses												
Overhead Expenses												
B. Total Operating Expenses												
C. Operating Income (A - B)												
Capital Costs												
PCS												
Finance Costs												
D. Total Capital Costs												
E. Net Income (C - D)												

**APPENDIX 5
AFFIRMATION**

Proposer's Name: _____

The above named Proposer affirms, declares, and certifies:

1. That such Proposer, or if the Proposer is a corporation any person signing on behalf of such Proposer who is of lawful age, is the only one interested in this Proposal; and that no person, firm or corporation other than herein above named has any interest in this Proposal, or in the Franchise Contract proposed to be taken.

2. By submission of this Proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint Proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(a) The terms of this Proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such terms with any other Proposer prior to the opening, directly or indirectly, to any other Proposer or to any competitor; and

(b) Unless otherwise required by law, the terms that have been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and

(c) No attempt has been made or will be made by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a Proposal for the purpose of restricting competition.

3. That no Council Member or other officer or employee or person whose salary is payable in whole or in part from the City treasury is directly or indirectly interested in this Proposal, or to the agreement to which it its related, or in any of the profits thereof.

4. That such Proposer is not in arrears with the City of New York upon any debt, obligation, or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, nor disqualified by any Department of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Proposer to receive a public Franchise Contract except as is indicated in an attachment hereto.

5. That from the date of the issuance of the RFP, neither Proposer nor any of its Key People¹, or any consultant, agent or representative, lobbyist or lawyer on Proposer's behalf, will

¹ References to **Key People** throughout this Affidavit include, but are not limited to, proprietors, owners, partners, directors, officers; shareholders of five percent (5%) or more of Proposer's issued stock, including owners of other securities (e.g., stock options, warrants and rights, etc.) that can be converted to stock that, if exercised, would constitute five percent (5%) of the firm's issued stock; any group, individual and/or entity with the right to acquire ownership of an amount of Proposer's stock, pursuant to any stock option, arrangement, warrant, right, or otherwise, which if combined with the current holdings of such group, individual and/or entity, would constitute five percent (5%) or more of the outstanding stock; each manager or individual participating in overall policy-making or financial decisions for the firm; and each person in a position to control and/or direct the firm's overall operations.

contact any employee in any City agency with respect to any aspect of this RFP other than the Authorized Agency Contact as set forth in the RFP or any addenda thereto.

(Signature of the person who signed the Proposal)

(Title of the person who signed the Proposal)

Subscribed and sworn to before me

this _____ day of _____, 20__

Notary Public

**APPENDIX 6
ACKNOWLEDGMENT OF ADDENDA**

THIS PAGE MUST BE SUBMITTED WITH YOUR PROPOSAL.

DIRECTIONS: COMPLETE PART I OR PART II, AS APPLICABLE.

PART I: Listed below are the dates of issue for each addendum received.

ADDENDUM # 1, DATED _____, 20__

ADDENDUM # 2, DATED _____, 20__

ADDENDUM # 3, DATED _____, 20__

ADDENDUM # 4, DATED _____, 20__

ADDENDUM # 5, DATED _____, 20__

ADDENDUM # 6, DATED _____, 20__

ADDENDUM # 7, DATED _____, 20__

ADDENDUM # 8, DATED _____, 20__

ADDENDUM # 9, DATED _____, 20__

ADDENDUM # 10, DATED _____, 20__

ADDENDUM # 11, DATED _____, 20__

ADDENDUM # 12, DATED _____, 20__

PART II: _____ NO ADDENDA TO THIS RFP WERE RECEIVED

_____ DATE

PROPOSER'S NAME

PROPOSER'S SIGNATURE

APPENDIX 7
PROPOSAL PACKAGE CHECKLIST

I. Sealed Package

A. One signed original and twenty (20) copies (as further detailed in Section III. B. 2. above) of each of the following:

1. Proposal Cover Sheet(s)
2. Statement of qualifications for each participating firm or subcontractor including:
 - a. Narrative
 - b. Informational Videos and Photographs
 - c. References
 - d. Organization Chart and Team Members
 - e. Individual Resumes
 - f. Financial Statement
3. Technical Proposal including:
 - a. Narrative
 - b. Cash Flow Analysis
 - c. Acknowledgment of Addenda

B. Required City Documents: One signed original and two copies of the following documents:

1. VENDEX Business Entity Questionnaire for each participating firm
2. VENDEX Principal Questionnaires for each principal of each participating firm
3. VENDEX Subcontractor Questionnaire for each subcontractor
4. Affirmation for each participating firm and subcontractor
5. Proposer's Affidavit
6. Doing Business Data Forms

II. Sealed Envelope - One signed original and twenty (20) copies of the Compensation Proposal

III. Drawings - Two (2) sets of drawings on foam-core board

IV. Scale Models - One set of scale models

**APPENDIX 8
MACBRIDE PRINCIPLES**

**MacBRIDE PRINCIPLES PROVISIONS
FOR NEW YORK CITY CONTRACTORS**

ARTICLE I MacBRIDE PRINCIPLES

NOTICE TO ALL PROSPECTIVE CONTRACTORS

Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City Contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of work place opportunity.

Pursuant to Section 6-115.1, prospective contractors for Contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars (\$10,000), or for construction involving an amount greater than fifteen thousand dollars (\$15,000), are asked to sign a rider in which they covenant and represent, as a material condition of their Contract, that any business in Northern Ireland operations conducted by the Contractor that holds a ten (10%) percent or greater ownership interest and any individual or legal entity that holds a ten (10%) percent or greater ownership interest in the Contractor will be conducted in accordance with the MacBride Principles of non-discrimination in employment.

Prospective Contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a Contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the City that the Contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

In the case of Contracts let by other than competitive sealed bidding, if a prospective Contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its function and there is no other responsible Contractor who will supply goods, services or construction of comparable quality at a comparable price.

PART A

In accordance with Section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either: (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to

conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of this compliance with such principles.

PART B

For purposes of this section, the following terms shall have the following meanings:

- A. “*MacBride Principles*” shall mean those principles relating to non-discrimination in employment and freedom of work place opportunity which requires employers doing business in Northern Ireland to:
1. Increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 2. Take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the work place and while traveling to and from work;
 3. Ban provocative religious or political emblems from the work place;
 4. Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
 5. Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
 6. Abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
 7. Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from the underrepresented religious groups;
 8. Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
 9. Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

ARTICLE II ENFORCEMENT OF ARTICLE I

The Contractor agrees that the covenants and representations in Article I above are material conditions to this Contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this Contract for cause and procure the

supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the Contract price for the uncompleted portion of this Contract and the cost to the contracting entity of completing performance of this Contract either itself or by engaging another Contractor or Contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of the Contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of the Contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights or remedies the entity has pursuant to this Contract or by operation of Law.

APPENDIX 9
INVESTIGATION CLAUSE

1. The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry relative to this agreement conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to this agreement or when it is the subject of the investigation, audit or inquiry.

2. A hearing shall be convened in accordance with section 3 below if:

(a) any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding, refuses to testify concerning the award of, or performance under, this agreement, before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath; or

(b) any person refuses to testify concerning the award of, or performance under, this agreement, for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony.

3. (a) The commissioner or agency head whose agency is a party in interest to this agreement shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend this agreement pending the final determination pursuant to section 5 below without the City incurring any penalty or damages for delay or otherwise.

4. The penalties that may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of this City agreement, that the refusal to testify concerns and providing that it has not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

5. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information that may be relevant and appropriate.

(a) The parties' good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has significant interest in an entity subject to penalties under section 4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in section 3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

6. (a) The term "license" or "permit" as used herein shall be defined as a license, permit, revocable consent, franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, or employee.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

Appendix 10

**PROPOSER'S AFFIDAVIT
REQUEST FOR PROPOSALS FOR A FRANCHISE TO INSTALL, OPERATE AND
MAINTAIN PUBLIC COMMUNICATIONS STRUCTURES IN THE BOROUGHES OF
THE BRONX, BROOKLYN, MANHATTAN, QUEENS AND STATEN ISLAND**

PIN # 8582014 FRANCH3

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

_____, being duly sworn, deposes and says:

I am the _____ of _____ (Proposer Name) ("Proposer") and I am duly authorized to act on behalf of the Proposer.

I hereby agree that from the date of the issuance of the RFP, neither Proposer nor any of its Key People², or any consultant, agent or representative, lobbyist or lawyer on Proposer's behalf, will contact any employee in any City agency with respect to any aspect of this RFP, other than the official Authorized Agency Contact as set forth in the RFP or any addenda thereto.

I further understand that a failure to comply with this Affidavit may include the rendering of the Proposer's proposal non-responsive and may result in the entry of an Advice of Caution in the City's VENDEX system.

A false representation or violation of any of the above covenants made in connection with this Affidavit may bar Proposer and/or the undersigned officer from doing work for the City. In addition, such false representation or violation may subject Proposer and the undersigned officer to criminal charges, including charges for violation of New York State Penal Law Sections 175.35 (Offering a False Statement for Filing) and 210.40 (Sworn False Statement) and/or Title 18 U.S.C. Sections 1001 (False or Fraudulent Statement) and 1341 (Mail Fraud).

² References to **Key People** throughout this Affidavit include, but are not limited to, proprietors, owners, partners, directors, officers; shareholders of five percent (5%) or more of Proposer's issued stock, including owners of other securities (e.g., stock options, warrants and rights, etc.) that can be converted to stock that, if exercised, would constitute five percent (5%) of the firm's issued stock; any group, individual and/or entity with the right to acquire ownership of an amount of Proposer's stock, pursuant to any stock option, arrangement, warrant, right, or otherwise, which if combined with the current holdings of such group, individual and/or entity, would constitute five percent (5%) or more of the outstanding stock; each manager or individual participating in overall policy-making or financial decisions for the firm; and each person in a position to control and/or direct the firm's overall operations.

Signature
Proposer Name

Date

Sworn to before me this ____

day of _____, 20____

Notary Public

Appendix 11

DOING BUSINESS DATA FORMS

Doing Business Data Form

To be completed by the City Agency prior to distribution

Agency: _____ Transaction ID: _____

Check One:	Transaction Type (check one):		
<input type="checkbox"/> Proposal	<input type="checkbox"/> Concession	<input type="checkbox"/> Contract	<input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise	<input type="checkbox"/> Grant	<input type="checkbox"/> Pension Investment Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

Please return the completed Data Form to the City Agency that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@cityhall.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

- Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Entity is a Non-Profit: Yes No

Entity Type: Corporation (any type) Joint Venture LLC Partnership (any type)
 Sole Proprietor Other (specify): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

Section 2: Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit There are no individual owners No individual owner holds 10% or more shares in the entity
 Other (explain): _____

Principal Owners (who own or control 10% or more of the entity):

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Section 4: Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

I certify that the information submitted on these four pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

Return the completed Data Form to the agency that supplied it.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.



DOING BUSINESS ACCOUNTABILITY PROJECT
QUESTIONS AND ANSWERS ABOUT THE DOING BUSINESS DATA FORM

What is the purpose of this *Data Form*?

To collect accurate, up-to-date identification information about entities that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), the recently passed campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of these entities and mandates the creation of a *Doing Business Database* to allow the City to enforce the law. The information requested in this *Data Form* must be provided, regardless of whether the entity or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

Why have I received this *Data Form*?

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this *Data Form* is completed. Most transactions valued at more than \$5,000 are considered business dealings and require completion of the *Data Form*. Exceptions include transactions awarded on an emergency basis or by publicly advertised, non-pre-qualified competitive sealed bid. Other types of transactions that are considered business dealings include real property and land use actions with the City.

What entities will be included in the *Doing Business Database*?

Entities that hold \$100,000 or more in grants, contracts for goods or services, franchises or concessions (\$500,000 or more for construction contracts), along with entities that hold any economic development agreements or pension fund investment contracts, are considered to be doing business with the City for the purposes of LL 34 and will be included in the *Doing Business Database*. Because all of the business that an entity does or proposes to do with the City will be added together, the *Data Form* must be completed for all covered transactions even if an entity does not currently do enough business with the City to be listed in the *Database*.

What individuals will be included in the *Doing Business Database*?

The principal officers, owners and certain senior managers of entities listed in the *Doing Business Database* are themselves considered to be doing business with the City and will also be included in the *Database*.

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer (COO), or their functional equivalents. See the *Data Form* for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% or more of the entity. This includes stockholders, partners and anyone else with an ownership or controlling interest in the entity.
- **Senior Managers** include anyone who, either by job title or actual duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any contract, concession, franchise, grant or economic development agreement with the City. At least one Senior Manager must be listed or the *Data Form* will be considered incomplete.

I provided some of this information on the VENDEX Questionnaire; do I have to provide it again?

Although the *Doing Business Data Form* and the VENDEX Questionnaire request some of the same information, they serve entirely different purposes. In addition, the *Data Form* requests information concerning senior managers, which is not part of the VENDEX Questionnaire.

My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the *Data Form* be completed?

A joint venture that does not yet exist must submit *Data Forms* from each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.



Will the information on this *Data Form* be available to the public?

The names and titles of the officers, owners and senior managers reported on the *Data Form* will be made available to the public, as will information about the entity itself. However, personal identifying information, such as home address, home phone and date of birth, will not be disclosed to the public, and home address and phone number information will not be used for communication purposes.

No one in my organization plans to contribute to a candidate; do I have to fill out this *Data Form*?

Yes. All entities are required to return this *Data Form* with complete and accurate information, regardless of the history or intention of the entity or its officers, owners or senior managers to make campaign contributions. The *Doing Business Database* must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

I have already completed a *Doing Business Data Form*; do I have to submit another one?

Yes. An entity is required to submit a *Doing Business Data Form* each time it proposes on or enters a transaction considered business dealings with the City. However, the *Data Form* has both a No Change option, which only requires an entity to report its EIN and sign the last page, and a Change option, which allows an entity to only fill in applicable information that has changed since the previous completion of the *Data Form*. No entity should have to fill out the entire *Data Form* more than once.

How does a person remove him/herself from the *Doing Business Database*?

Any person who believes that s/he should not be listed may apply for removal from the *Database* by submitting a Request for Removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the entity, or the entity no longer being in business. Entities may also update their database information by submitting an update form. Both of these forms are available online at www.nyc.gov/mocs (once there, click MOCS Programs) or by calling 212-788-8104.

How long will an entity and its officers, owners and senior managers remain listed on the *Doing Business Database*?

- **Contract, Concession and Economic Development Agreement holders:** generally for the term of the transaction, plus one year.
- **Franchise and Grant holders:** from the commencement or renewal of the transaction, plus one year.
- **Pension investment contracts:** from the time of presentation on an investment opportunity or the submission of a proposal, whichever is earlier, until the end of the contract, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.
- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.

For information on other transaction types, contact the Doing Business Accountability Project.

What are the new campaign contribution limits for people doing business with the City?

Contributions to City Council candidates are limited to \$250 per election cycle; \$320 to Borough President candidates; and \$400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at www.nyccfb.info, or 212-306-7100.

The *Data Form* is to be returned to the contracting agency.

If you have any questions about the *Data Form* please contact the Doing Business Accountability Project at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.