

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with the Forest Park Trust, Inc. regarding the Oak Ridge Building and George Seuffert Bandshell in Forest Park, Queens.

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with the Forest Park Trust, Inc. to the Franchise and Concession Review Committee for approval.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

**May 13th,
2015**

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Department of Parks & Recreation ("Parks")	CONCESSION TITLE/DESCRIPTION: Sole Source Agreement with the Forest Park Trust regarding the Oak Ridge Building and George Seuffert Bandshell in Forest Park, Queens.
# VOTES required for proposed action = <u> 4 </u> <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # Q15-O

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
 Competitive Sealed Proposals (CSP)*

Different Procedure * (Sole Source Agreement Other _____)

Negotiated Concession*

Recommended Concessionaire: Forest Park Trust, Inc. EIN SSN # 31-1558645
 Attach Memo(s) *

CONCESSION AGREEMENT TERM

Initial Term: To be negotiated
 Renewal Option(s) Term: To be negotiated

Total Potential Term: To be negotiated

ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS
 (Check all that apply)

Additional description attached

Annual Minimum Fee(s) \$ _____

% Gross Receipts _____%

The Greater of Annual Minimum Fee(s of \$ _____ v. _____% of Gross Receipts

Other formula To be negotiated

LOCATION OF CONCESSION SITE(S)* N/A

Address: 1 Forest Park Drive, Woodhaven, NY
 Borough: Queens C.B. 9
 Block # 3866 Lot # 70
 *Attach additional sheet

CONCESSION TYPE (Check all that apply)

> Significant Concession:
 NO
 YES Basis:
 Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> Major Concession:
 NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

- the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name Alexander Han

Title Deputy Director of Concessions

Signature

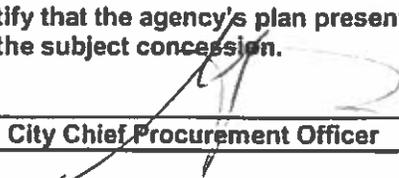


Date 4/23/2015

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature



City Chief Procurement Officer

Date 4/27/15

CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):

The New York City Department of Parks and Recreation ("Parks") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules ("different procedure") for the reasons listed in section (B)(2).

B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

1. *Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.*

To be determined at a later date - when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a different procedure to negotiate a Sole Source License Agreement with the Forest Park Trust, Inc. ("the Trust") regarding the Oak Ridge Building and the George Seuffert Bandshell in Forest Park, Queens.

2. *Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.*

The Trust is a not-for-profit organization incorporated in 1997. Its mission is to support Forest and Highland Parks by securing funds and promoting those parks as a major recreational, environmental, educational and cultural facility for the residents of the surrounding areas and all of New York City.

The Trust entered into a License Agreement ("Current Agreement") with Parks with a five (5) year term on November 20, 2009, which was renewed for one year on November 20, 2014, establishing the Trust's responsibilities to program, maintain and operate the Oak Ridge Building and the George Seuffert Bandshell.

Oak Ridge is a beautifully restored century old building inside of Forest Park. Oak Ridge offers free community programming throughout the year. It also serves as a rentable community venue hosting weddings, christenings, and private events that help defray the costs of the maintenance, restoration and security of the building. The revenue derived by the Trust from such events is used solely for the maintenance, operation, restoration and staffing of the facility. In 2014, Oak Ridge hosted 23 such events which generated \$35,660. Another 20 events were held at Oak Ridge that were either produced free for the community by the Trust or were organized by local community groups.

Through the Current Agreement, the Trust also maintains, furnishes and paints the George Seuffert Bandshell. The bandshell is host to Forest Park's annual summer concert series produced by the Trust and sponsored by private donors, board members and elected officials. The Trust is working with community partners to bring additional programming and special events to the bandshell. The bandshell is also available to the community for use with a special events permit.

The Trust administers free public programs and activities in both Forest and Highland Park. Such activities include seasonal festivals, ballroom dance instruction, children's shows, zumba, youth sport clinics, garden entertainment and educational programs. Since 2004, the Trust has hosted six-week sports summer camps that benefit about 250 children annually. The Trust partners with the City Council to hire local coaches to run the sports clinics in both Forest and Highland Parks.

The Trust also purchases equipment for the Parks district maintenance staff to use at Forest and Highland Parks such as vehicles, snow blowers, landscaping equipment, chainsaws, garbage receptacles, and flags.

The Trust hires landscape supervisors and crew members to maintain the trails and gardens for Forest and Highland Parks.

It is anticipated that the Sole Source License Agreement with the Trust will allow the Trust to engage in revenue generating activities, the proceeds of which will be used to offset the costs of the activities contemplated under such agreement, including maintenance, operations, and programming of the Oak Ridge Building and George Seuffert Bandshell.

Given that the Trust has a specific commitment to the Oak Ridge Building, the George Seuffert Bandshell, as well as the entirety of the Forest and Highland Park environs, Parks believes that it is in the best interest of the City to negotiate a Sole Source License Agreement with the Trust for the operation and programming of these facilities, rather than proceed with a competitive solicitation process.

3a. ***Briefly explain the selection procedure that will be utilized.***

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with the Trust which will go before the FCRC on May 13, 2015 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated Agreement with the Trust to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box:*** N/A

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** __/__/__.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. N/A



NYC Parks

Robert Garafola
Deputy Commissioner
for Management, Budget,
and Public Programs

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City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

TO: Hon. Melinda Katz., President of the Borough of Queens
Ralph Gonzalez, Chair, Queens Community Board #9

FROM: Philip Abramson, NYC Parks Revenue Project Manager *PA*

SUBJECT: Notice of Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with the Forest Park Trust, Inc. to Operate and Provide for Parks Appropriate Programming and Events at the Oak Ridge Building and the George Seuffert Bandshell in Forest Park, Queens.

DATE: February 26, 2015

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Queens Borough President and Queens Community Board 9 that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate a Sole Source License Agreement with the Forest Park Trust, Inc. to operate and provide for Parks appropriate programming and events at the Oak Ridge Building and the George Seuffert Bandshell in Forest Park, Queens.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please feel free to contact Philip Abramson, NYC Parks Revenue Project Manager, by phone at (212) 360-3426 or via email at philip.abramson@parks.nyc.gov.

Thank you.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with the Bronx River Alliance regarding the Bronx River, and the new Bronx River House being built at Starlight Park.

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with the Bronx River Alliance to the Franchise and Concession Review Committee for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

May 13th,
2015

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Department of Parks & Recreation ("Parks")	CONCESSION TITLE/DESCRIPTION: Sole Source License Agreement with the Bronx River Alliance regarding the Bronx River, and the new Bronx River House, being built at Starlight Park.
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # X147A-O

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
 Competitive Sealed Proposals (CSP)*

Different Procedure * (Sole Source Agreement Other _____)

Negotiated Concession*

Recommended Concessionaire: Bronx River Alliance EIN SSN # 75-3001587
 Attach Memo(s) *

CONCESSION AGREEMENT TERM

Initial Term: To be negotiated
 Renewal Option(s) Term: To be negotiated

Total Potential Term: To be negotiated

ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS
 (Check all that apply)

Additional description attached

Annual Minimum Fee(s) \$ _____

% Gross Receipts _____%

The Greater of Annual Minimum Fee(s) of \$ _____ v. _____% of Gross Receipts

Other formula To be negotiated

LOCATION OF CONCESSION SITE(S)* N/A
 Address 1490 Sheridan Expressway
 Borough Bronx C.B. 9
 Block # 3019 Lot # 100
 *Attach additional sheet

CONCESSION TYPE (Check all that apply)

> Significant Concession:
 NO
 YES Basis:
 Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> Major Concession:
 NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

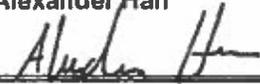
The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

- the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter Into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name Alexander Han Title Deputy Director of Concessions

Signature  Date 4/23/2015

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature  Date 4/27/15
City Chief Procurement Officer

CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):

The New York City Department of Parks and Recreation ("Parks") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules ("different procedures") for the reasons listed in section (B)(2).

B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

1. *Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.*

To be determined at a later date - when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate a Sole Source License Agreement with the Bronx River Alliance ("the Alliance") regarding the Bronx River ("the River"), and the new Bronx River House being built at Starlight Park.

2. *Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.*

The Alliance is a not-for-profit organization incorporated in 2001. Its mission is to serve as a coordinated voice on behalf of the environmental health of the River and work in partnership with public and private entities to protect, improve and restore the Bronx River Corridor and Greenway so that they can be healthy ecological, recreational, educational and economic resources for the communities through which the River flows. Since its inception the Alliance has worked closely with Parks to improve and protect the River and to create a Greenway that connects new and existing parks along the River, improving public access, stewardship and enjoyment of the River and parkland. The Alliance promotes conservation and enhancement of the River and development of the Greenway through ecological restoration and management, watershed-wide studies and policy initiatives, education, planning, and public outreach. The Alliance administers public programs and activities within City parklands along the Greenway. It also assists Parks in developing, maintaining and restoring public parks along the Greenway.

The Alliance and Parks entered into a License Agreement ("Current Agreement") with an initial term of five (5) years on September 14, 2009, which was then renewed for a one year term, expiring on September 14, 2015. The parties expect to extend the Current Agreement for an additional term expiring December 31, 2015.

Under the Current Agreement, the Alliance maintains, restores and improves the Bronx River, oversees volunteers, provides educational outreach, public and special events, recreational activities and participates in scientific studies.

The Alliance conducts canoe trips and other educational programs on or along the River to foster awareness, stewardship and knowledge of the River. It charges fees for some trips and programs to defray the costs of conducting and outfitting them, for insurance, and for keeping the river free of obstacles so that it is accessible to

boaters. The Alliance uses fees to cover the costs of trips and programs that are offered free or at less than full cost.

Parks (with the NYC Department of Design and Construction as the construction agent) is currently building Bronx River House, situated on Starlight Park adjacent to the River. This new Parks facility will be the base of operations for the restoration and management of the River and its Greenway. The building will offer community space for indoor-outdoor activities, and will serve as the headquarters for the Alliance. It is anticipated that the Alliance (and some Parks staff) will move into the building in late 2015 when construction is complete. In addition to conducting Parks appropriate public programs, the Alliance will be responsible for making areas in the Bronx River House available to the public. It is anticipated that the Alliance will share responsibility for the maintenance and security of the building and adjacent terrace with Parks, on terms that will be defined in the Sole Source License Agreement to be negotiated with the Alliance. The Alliance anticipates charging fees for the use of the public areas and for programs it conducts in Bronx River House to help defray its costs of maintenance and security of the building.

It is anticipated that a new Sole Source License Agreement will be negotiated with the Alliance pursuant to which the Alliance will have additional maintenance, operations and programming responsibilities in connection with the new Bronx River House being constructed, including conducting Parks appropriate public programs and making areas in the Bronx River House available to the public. It is anticipated that all revenues generated, including those from canoe trips, programs, special events and site rentals, will be used to offset the Alliance's costs contemplated under such agreement, including maintenance, operations, and programming responsibilities.

Given that the Alliance has a specific commitment to the River and its surrounding parkland, Parks believes that it is in the best interest of the City to negotiate a Sole Source License Agreement with the Alliance rather than proceed with a competitive solicitation process.

3a. ***Briefly explain the selection procedure that will be utilized.***

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with the Alliance which will go before the FCRC on May 13, 2015 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated Agreement with the Alliance to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box: N/A***

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*

- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** __/__/__.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. N/A



NYC Parks

Robert Garafola
Deputy Commissioner
for Management, Budget,
and Public Programs

T 212.360.1302

E robert.garafola@parks.nyc.gov

City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

TO: Hon. Ruben Diaz Jr., President of the Borough of the Bronx
Rafael Salamanca, District Manager, Bronx Community Board #2
Ivine Galarza, District Manager, Bronx Community Board #6
William Rivera, Chair, Bronx Community Board #9
Carmen Rosa, District Manager, Bronx Community Board #12

FROM: Philip Abramson, NYC Parks Revenue Project Manager *PA*

SUBJECT: Notice of Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with the Bronx River Alliance to Operate Canoeing Trips and Programs Along the Bronx River, and to Program Parks Appropriate Events at the New Bronx River House Being Built at Starlight Park.

DATE: February 26, 2015

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Bronx Borough President and Bronx Community Boards 2, 6, 9, and 12, that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate a Sole Source License Agreement with the Bronx River Alliance ("the Alliance") to operate canoeing trips and programs along the Bronx River ("the River"), and to program Parks appropriate events at the new Bronx River House being built at Starlight Park.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please feel free to contact Philip Abramson, NYC Parks Revenue Project Manager, by phone at (212) 360-3426 or via email at philip.abramson@parks.nyc.gov.

Thank you.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 3)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with the Times Square District Management Association Inc. regarding Father Duffy Square in Times Square, Manhattan.

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with the Times Square District Management Association Inc. to the Franchise and Concession Review Committee for approval.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

**May 13th,
2015**

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Department of Parks & Recreation ("Parks")	CONCESSION TITLE/DESCRIPTION: Sole Source License Agreement with the Times Square District Management Association Inc. regarding Father Duffy Square in Times Square, Manhattan.
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # M93-O

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB) Competitive Sealed Proposals (CSP)*
 Different Procedure * (Sole Source Agreement Other _____)
 Negotiated Concession*

Recommended Concessionaire: Times Square District Management Association Inc. EIN SSN # 13-3627527
 Attach Memo(s) *

<p align="center">CONCESSION AGREEMENT TERM</p> Initial Term: To be negotiated Renewal Option(s) Term: To be negotiated Total Potential Term: To be negotiated	<p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____% of Gross Receipts <input checked="" type="checkbox"/> Other formula To be negotiated
LOCATION OF CONCESSION SITE(S)* <input type="checkbox"/> N/A Address: Intersection of Broadway, 7th Ave, W. 46th St, W. 47th St.; New York, NY Borough: Manhattan C.B. 5 Block # 1018 Lot # 65 *Attach additional sheet	

CONCESSION TYPE (Check all that apply)

> Significant Concession:
 NO
 YES Basis:
 Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> Major Concession:
 NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.
 The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

 The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.
 The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
 The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.

The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

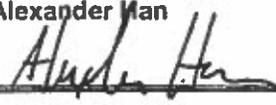
AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name Alexander Han

Title Deputy Director of Concessions

Signature

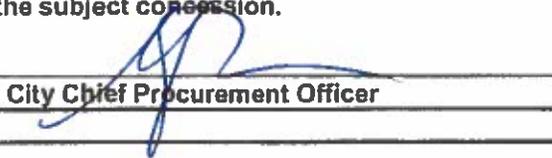


Date 4/23/2015

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature



City Chief Procurement Officer

Date 4/27/15

CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):

The New York City Department of Parks and Recreation ("Parks") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules ("different procedure") for the reasons listed in section (B)(2).

B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

1. *Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.*

To be determined at a later date - when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a different procedure to negotiate a Sole Source License Agreement with the Times Square District Management Association Inc. ("the Alliance") regarding Father Duffy Square in Times Square, Manhattan.

2. *Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.*

The Alliance, founded in 1992, works to improve and promote Times Square. It cultivates the creativity, energy and edge that have made the area an icon of entertainment, culture and urban life for more than a century. The Alliance is a 501(c)3 not-for-profit organization, accepts tax-deductible contributions, and is governed by a large, voluntary Board of Directors.

In addition to providing core neighborhood services with its Public Safety Officers and Sanitation Associates, the Alliance promotes local businesses; encourages economic development and public improvements; co-coordinates numerous major events in Times Square (including the annual New Year's Eve and Solstice in Times Square celebrations); and advocates on behalf of its constituents with respect to a host of public policy, planning and quality-of-life issues. The Alliance's district covers most of the territory from 40th Street to 53rd Street between 6th and 8th Avenues, as well as Restaurant Row (46th Street between 8th and 9th Avenue).

The Alliance entered into a Maintenance and Operations Agreement ("Agreement") with Parks in 2006 for Father Duffy Square, a Parks property located between West 46th Street and West 47th Street, and 7th Avenue and Broadway. A new agreement ("Current Agreement"), was executed on December 24, 2014 which expires on December 31, 2015, which includes provisions for the Alliance to perform maintenance of the Public Stairs, the Statuary, and the Plaza, for the accommodation, enjoyment and convenience of the public.

The Current Agreement between the Alliance and Parks contains a revenue sharing provision regarding Special Events that take place at Father Duffy Square. Such events, operated or sponsored by third parties, generate special event concession fees ("fees") for the use of this public space. The Current Agreement stipulates that the Alliance may collect sixty (60) percent of the fees. The fees are used to offset a portion of the Alliance's costs for providing maintenance and operation services at Father Duffy Square.

It is anticipated that the Sole Source License Agreement with the Alliance will continue to allow the Alliance to collect special event concession fees, the proceeds of which will be used to offset a portion of the Alliance's costs contemplated under such agreement, including the maintenance and operation of Father Duffy Square.

Given that the Alliance has demonstrated a decade of commitment to maintaining and improving Father Duffy Square as an integral part of the Times Square district, Parks believes that it is in the best interest of the City to negotiate a Sole Source License Agreement with the Alliance, rather than proceed with a competitive solicitation process.

3a. ***Briefly explain the selection procedure that will be utilized.***

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with the Alliance which will go before the FCRC on May 13, 2015 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated Agreement with the Alliance to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box:*** N/A

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** ___/___/___.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. N/A



NYC Parks

Robert Garafola
Deputy Commissioner
for Management, Budget,
and Public Programs

T 212.360.1302 E robert.garafola@parks.nyc.gov

City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

TO: Hon. Gale Brewer., President of the Borough of Manhattan
Wally Rubin, District Manager, Manhattan Community Board #5

FROM: Philip Abramson, NYC Parks Director of Revenue Communications *PA*

SUBJECT: Notice of Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with the Times Square Alliance to Collect Special Event Concession Fees Solely for the Maintenance and Operation of Father Duffy Square in Times Square, Manhattan.

DATE: April 2, 2015

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board 5 that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate a Sole Source License Agreement with the Times Square Alliance to collect special event concession fees solely for the maintenance and operation of Father Duffy Square in Times Square, Manhattan.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please feel free to contact Philip Abramson, NYC Parks Director of Revenue Communications, by phone at (212) 360-3426 or via email at philip.abramson@parks.nyc.gov.

Thank you.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 4)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with Mighty Fine Inc. (“Mighty Fine”) for the non-exclusive use of city-owned trademarks on merchandise.

BE IT FURTHER RESOLVED, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with Mighty Fine to the FCRC for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

Date: May 13th, 2015

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET

(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: NYC & Company, Inc. on behalf of NYC Department of Small Business Services	CONCESSION TITLE/DESCRIPTION: Non-exclusive Use of City-Owned Trademarks on Merchandise
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # NYCCO-2015-001

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
 Competitive Sealed Proposals (CSP)*

Different Procedure * (Sole Source Agreement Other _____)

Negotiated Concession*

Recommended Concessionaire: Mighty Fine, Inc. EIN SSN # 95-4722160
 Attach Memo(s) *

<p align="center">CONCESSION AGREEMENT TERM</p> <p> Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u> </p> <p> Total Potential Term: <u>To be negotiated</u> </p>	<p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p> <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ </p> <p> <input type="checkbox"/> % Gross Receipts _____% </p> <p> <input type="checkbox"/> The Greater of Annual Minimum Fee(s) of \$ _____ v. _____% of Gross Receipts </p> <p> <input checked="" type="checkbox"/> Other formula <u>To be negotiated</u> </p>
<p> LOCATION OF CONCESSION SITE(S)* <input checked="" type="checkbox"/> N/A Address _____ Borough _____ C.B. _____ Block # _____ Lot # _____ <small>*Attach additional sheet</small> </p>	

CONCESSION TYPE (Check all that apply)

> **Significant Concession:**

NO
 YES Basis:
 Total potential term =>10 years
 Projected annual income/value to City >\$100,000
 Major Concession

> **Major Concession:**

NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP.
 YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

the FCRC to waive advance written notice to each affected CB/BP.

- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name

[Handwritten Signature]

Title Deputy Commissioner

Signature

[Handwritten Signature]

Date 4/23/15

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature

[Handwritten Signature]

City Chief Procurement Officer

Date 4/27/15

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Mighty Fine, Inc. pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

- 1. Briefly summarize the terms and conditions of the concession.** *Add additional sheet(s), if necessary.*

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Mighty Fine, Inc.

- 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.** *[Explain]*

Mighty Fine Inc. approached NYC & Company, Inc. to create apparel containing the City's proprietary marks for distribution to retailers such as Express and Target with whom Mighty Fine has unique manufacturing and distribution arrangements. Mighty Fine proposed unique designs to be created by Mighty Fine's art department to be used solely for this arrangement if approved. This proposed non-exclusive license agreement will not bar other opportunities from other apparel manufacturers and will allow the City to diversify apparel options available to consumers at retail.

- 3a. Briefly explain the selection procedure that will be utilized.** *[Explain]*

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source Agreement ("Agreement") with Mighty Fine, Inc. for the non-exclusive use of city-owned trademarks on the apparel and co-branded apparel merchandise produced and sold exclusively by Mighty Fine Inc. Mighty Fine Inc. held a non-concession agreement for the purpose of testing the product interest to its distribution channels and customers unique to Mighty Fine, Inc. At the time the non-concession agreement with Mighty Fine Inc. was executed the parties anticipated that the revenue would not exceed administrative costs which were estimated to be \$8,500, however Mighty Fine Inc. received two large orders from The 9/11 Memorial and Museum, the royalties for which amounted to \$13,203.35. It was in the city's best interest to allow the sales to proceed. It was impossible to determine during negotiation of the non-concession agreement that the pilot program would have been so successful and based on the information available at the time there

was no basis to justify bringing the matter before the FCRC for a concession agreement. Given Mighty Fine's past success and new sales leads it is now in the city's best interest to negotiate a concession agreement with Mighty Fine, Inc. to develop this market segment. NYC & Company/SBS is seeking to negotiate an agreement that includes the excess revenue from the non-concession agreement. We intend to bring this matter before the FCRC on May 13th, 2015 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be significant we will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without the need for initial joint public hearing).

3b. If the selection procedure is a negotiated concession, check the applicable box: N/A

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** ___/___/___.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. *[Explain]* N/A

Memo

To: NYC Borough Presidents
NYC Community Board Presidents

From: Benjamin Ruiz 
NYC & Company Inc.

CC: Tia Pierce,
Department of Small Business Services

Stephanie Ruiz
Mayor's Office of Contract Services

Bryan Grimaldi
NYC & Company Inc.

Christina Rowley
NYC & Company Inc.

Date: April 3rd, 2015

Re: Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Mighty Fine, Inc. for the non-exclusive use of city-owned trademarks on merchandise

Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the Borough Presidents and Community Boards that NYC & Company Inc. on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Mighty Fine, Inc. for the non-exclusive use of city-owned trademarks on merchandise. If you have any questions, please contact me by e-mail at bruiz@nycgo.com.

Best,


Benjamin Ruiz

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 5)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Fire Department ("FDNY") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source Concession Agreement ("Concession Agreement") with The Friends of New York City Fire Department Collection, Inc. ("Friends") regarding the New York City Fire Museum in the borough of Manhattan.

BE IT FURTHER RESOLVED, that FDNY shall submit the Concession Agreement it proposes to enter into with Friends to the Franchise and Concession Review Committee for approval.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

May 13, 2015

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Fire Department	CONCESSION TITLE/DESCRIPTION: Sole Source Concession Agreement ("Concession Agreement") with The Friends of New York City Fire Department Collection, Inc. ("Friends") regarding the New York City Fire Museum in the borough of Manhattan. CONCESSION IDENTIFICATION # _____
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
 Competitive Sealed Proposals (CSP)*

Different Procedure * (Sole Source Agreement Other _____)

Negotiated Concession*

Recommended Concessionaire The Friends of the New York City Fire Department Collection, Inc.
 EIN # 13-3095792 Attach Memo(s) *

CONCESSION AGREEMENT TERM

Initial Term: To be negotiated
 Renewal Option(s) Term: To be negotiated
 Total Potential Term: To be negotiated

LOCATION OF CONCESSION SITE(S)* N/A
 Address: 278 Spring Street
 Borough Manhattan C.B.2
 Block # 579 Lot # 11
 *Attach additional sheet

ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS
 (Check all that apply)

To be negotiated

Additional description attached

Annual Minimum Fee(s) \$ _____
 % Gross Receipts _____%
 The Greater of Annual Minimum Fee(s) of \$ _____ v. _____% of Gross Receipts
 Other formula ___To be negotiated_____

CONCESSION TYPE (Check all that apply)

> Significant Concession:
 NO
 YES Basis:
 Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> Major Concession:
 NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

- The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.
- The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.
- The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.
- The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

- The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

- The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name Barry C. Greenpeace Title ACCO

Signature [Handwritten Signature] Date 4/29/15

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature [Handwritten Signature] Date 4/29/15

City Chief Procurement Officer

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

The New York City Fire Department ("FDNY") will be pursuing a Sole Source Concession Agreement ("Concession Agreement") pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), entitled Committee Approval of Different Procedures ("Different Procedures"), for the reasons provided in Section B(2) below.

B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

1. **Briefly summarize the terms and conditions of the concession.** *Add additional sheet(s), if necessary.*

Subject to Franchise and Concession Review Committee authorization, FDNY intends to negotiate the Concession Agreement with The Friends of the New York City Fire Department Collection, Inc. ("Friends") for the management of the New York City Fire Museum ("Fire Museum") , including the preservation, display, housing and management of the collections therein, such as firefighting memorabilia, apparatus and equipment owned by the New York City Fire Department and/or other collections delivered by the City of New York for such purposes.

2. **Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.**

The FDNY believes that it is in the best interest of the City of New York for FCRC to approve the use of a different procedure to negotiate a Concession Agreement with Friends.

Friends is a non-profit 501(c)(3) organization which currently operates the Fire Museum in a decommissioned firehouse in the Hudson Square neighborhood of Manhattan at 278 Spring Street. Friends has successfully operated the Fire Museum in conjunction with FDNY's Fire Safety Education Unit since October 22, 1981 (a period of more than 33 years). Friends has intimate knowledge of the collection it stewards, including implementation of best museum practices in regards to temperature control, artifact and archival storing conditions, handling of objects and how to properly perform upkeep of exhibits on display. The FDNY's current management agreement with the Friends will expire on June 30, 2015

In 2010, Friends applied for and was granted a provisional charter by the New York State Board of Regents. In 2015, Friends will apply for an absolute charter, which is expected to be granted and will certify Friends, and by extension the Fire Museum, as having a record of financial stability, programmatic accomplishment, a reputation for excellence, and satisfactorily meeting the Board of Regents educational standards for a museum.

Through its management by Friends, the City's collection of fire memorabilia and archives at the Fire Museum has become one of America's most prominent collections of fire related art, artifacts, equipment, and apparatus from the late 18th century to the present. Through its operation by Friends, the Fire Museum attracts approximately 46,000 visitors per year, including approximately 11,000 school children who participate in fire safety education tours. The Fire Museum allows New York City residents, and visitors from all around the country and the world, the opportunity to learn about fire suppression and New York City evolution by exploring exhibits displaying fire-related artifacts. The Fire Museum is also home to a permanent memorial to the 343 members of the FDNY who perished on September 11, 2001.

The Concession Agreement would allow Friends to continue the management and growth of the City's collection of fire memorabilia and archives. As part of the Concession Agreement, it is anticipated that Friends will remain the steward of the City's fire-related collection, continue to operate the Fire Museum at its present location and remain open to the public seven days a week. It is anticipated that the Concession Agreement with the Friends will allow the Friends to engage in revenue generating activities, the proceeds of which will be used to offset the costs of the activities contemplated under such agreement, including maintenance, operations, and management of the Fire Museum.

FDNY believes that negotiating a Concession Agreement with Friends would result in continued successful operation of the Fire Museum, continued critical fire safety education programming for New York City children and community members, and a safe place to house the City's fire-related collection and historical archives which are maintained, stored and displayed by museum professionals who are employed by Friends.

3a. Briefly explain the selection procedure that will be utilized.

FDNY requests FCRC authorization to utilize a Different Procedure, pursuant to Section 1-16 of the Concession Rules, to negotiate a Sole Source Concession Agreement with Friends, which will be presented to the FCRC on May 13, 2015 ("Step 1"). Once negotiated and if determined by FDNY to be a significant concession, FDNY and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If FDNY determines the concession to be non-significant, FDNY will present the fully negotiated Agreement with Friends to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint public hearing).

3b. If the selection procedure is a negotiated concession, check the applicable box:

N/A

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*

- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** __/__/__.

4. **If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances.** *[Explain]* N/A



FIRE DEPARTMENT

9 MetroTech Center Brooklyn, N.Y. 11201-3857

BARRY G. GREENSPAN
Agency Chief Contracting Officer
Bureau of Fiscal Services

Room 5W-4

MEMORANDUM

To: Hon. Gale Brewer, President of the Borough of Manhattan
Bob Gormley, District Manager, Manhattan Community Board #2

From: Barry G. Greenspan
Agency Chief Contracting Officer 

Subject: Notice of Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source Concession Agreement with The Friends of the New York City Fire Department Collection, Inc. for the Management of the New York City Fire Museum and the City-Owned Collections Therein

Date: April 2, 2015

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board #2 that the New York City Fire Department is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a Sole Source Concession Agreement with The Friends of the New York City Fire Department Collection, Inc. for the management of the New York City Fire Museum and the preservation, display, housing and management of the collections therein, such as firefighting memorabilia, apparatus and equipment owned by the New York City Fire Department and/or other collections delivered by the City of New York for such purposes.

This concession was determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please feel free to contact Assistant Counsel Alison Chen by phone at (718) 999-2399 or via e-mail at chena@fdny.nyc.gov.

RESOLUTION

FRANCHISE AND CONCESSION REVIEW COMMITTEE

CITY OF NEW YORK

Cal. No. 6

In the matter of approval of a proposed information services franchise agreement (“the Franchise Agreement”) between the City of New York and Phoenix Fiber Network, LLC (“Phoenix”).

WHEREAS, pursuant to Authorizing Resolution 1909,(adopted by New York City Council on August 22, 2013), the New York City Department of Information Technology and Telecommunications (“DoITT”) issued a solicitation on April 13 2015 for franchises for the provision of information services, as permitted by said Authorizing Resolution; and

WHEREAS, Phoenix responded to said solicitation, informing DoITT of its intent to acquire, rehabilitate and utilize dormant fiber; and

WHEREAS, the FCRC held a public hearing regarding the proposed Franchise Agreement on May 11, 2015 and said hearing was closed on that date.

NOW, THEREFORE, BE IT

RESOLVED, that the Franchise and Concession Review Committee does hereby approve the proposed Franchise Agreement between the City of New York and Phoenix Fiber Network, LLC.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON:

May 13, 2015

Date: _____

Signed _____

Title: Director of the Mayor’s Office of Contract Services

**RECOMMENDATION FOR APPROVAL OF FRANCHISE AGREEMENT
MEMORANDUM COVER SHEET**

(Attach, in the following order, FRFA Checklist and Narrative and "Responsibility Determination" form)

AGENCY Department of Information Technology & Telecommunications	FRANCHISEE Name: <u>Phoenix Fiber Network, LLC</u> Address: <u>2187 Atlantic Street, Stamford, CT 06092</u> Telephone #: <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>47-1390318</u>	FRANCHISE I.D. # 8582015FRANCHI1 <u>Information Services</u>
# VOTES required for proposed action = <u>5</u>		

DESCRIPTION OF FRANCHISE (Attach Proposed Resolution and Proposed Agreement)

Borough(s) Location of Franchises: All **C.B.(s)** All

PUBLIC SERVICE TO BE PROVIDED

Information services

SELECTION PROCEDURE

Request for Proposals Other:

<p align="center">FRANCHISE AGREEMENT TERM</p> Initial Term From: <u>Effective date</u> To: <u>06/30/2021</u> Renewal Option(s) Term: <u>Possible renewal extension to 15th anniversary of effective date.</u>	<p align="center">SUBSIDIES TO FRANCHISEE <input checked="" type="checkbox"/> N/A</p> \$ _____
---	---

DCP determined the franchise would have land use impacts or implications. YES NO

If YES, proposed franchise reviewed and approved pursuant to Sections 197-c and 197-d of the City Charter.

CPC approved on ___/___/___

City Council approved on ___/___/___ N/A

Law Department determined RFP/other solicitation document consistent with adopted authorizing Resolution on April 8, 2015.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the franchisee to be responsible and approve the franchise agreement. This is to further certify that the grant of a franchise agreement was approved by the FCRC on ___/___/___ by a vote of ___ to ___.

Name _____ Title _____

Signature _____ Date ___/___/___

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for approval of the franchise agreement.

Signature _____ Date ___/___/___

City Chief Procurement Officer

RECOMMENDATION FOR APPROVAL OF FRANCHISE AGREEMENT MEMORANDUM
Information Services Franchise

Instructions: Check all applicable boxes and provide all applicable information requested below. If any requested date or information is unavailable, describe the reason it cannot be ascertained.

A. AUTHORIZING RESOLUTION (Attach copy)

1. Mayor's Office of Legislative Affairs transmitted proposed authorizing resolution to City Council.
2. City Council conducted public hearing on 05/13/2013.
3. City Council adopted authorizing resolution on 08/22/2013.

B. SOLICITATION/EVALUATION/AWARD

1. RFP/solicitation document issued on: 04/13/2015. (Attach copy)
2. The Agency certifies that it complied with all the procedures for the solicitation, evaluation and/or award of the subject franchise as set forth in the applicable authorizing resolution and request for proposals, if applicable.

Basis for Renewal: (Attach copies of at least top three rated proposals, if applicable.)

Instructions: Check applicable box below; attach a Summary Rating sheet (for each competition pool) reflecting, as applicable:

- List of proposers in descending order of initial overall score, or if applicable, final overall score
 - For each proposer – 1) initial, and if applicable, final overall score and scores for each evaluated criterion (show scores at each evaluation stage); and 2) initial, and if applicable, final proposed revenue amount (or attach detailed documentation of revenue formula).
 - If applicable, identify the proposer(s) determined to be in the competitive range of technically viable proposals ("short list").
 - Attach list of proposed franchisee's Board of Directors.
- Recommended franchisee is highest rated proposer and offered highest amount of revenue (overall or for the competition pool).
- Recommended franchisee was sole proposer or was determined to be only responsive proposer (overall or for the competition pool), and the and agency certifies that a sufficient number of other entities had a reasonable opportunity to propose, the recommended franchisee meets the minimum requirements of the RFP or other solicitation and award is in the best interest of the City.
Explain:
- The subject franchise is a non-exclusive franchise and the franchisee has been determined to be both technically qualified and responsible.
- Other ***Describe:***

C. PUBLIC HEARING & APPROVAL

1. Agency filed proposed agreement with FCRC on 4/27/2015.
2. Public Hearing Notice
 - a. Agency published, for at least 15 business days immediately prior to the public hearing, a public hearing notice and summary of the terms and conditions of the agreement in the City Record from 04/20/2015 - 05/11/2015.
 - b. Agency provided written notice containing a summary of the terms and conditions of the agreement to each affected CB and BP by 04/20/2015. (Check the applicable box below and provide the requested information)
 - Franchise relates to property in one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.
 - Franchise relates to property in more than one borough and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the agreement twice in New York Post, a NYC daily, citywide newspaper on 04/22/2015 and 04/23/2015, and in Metro, also a NYC daily, citywide newspaper on 04/22/2015 and 04/23/2015. A copy of each such notice containing a summary of the terms and conditions of the subject agreement was sent to each affected CB, each affected BP and each affected Council Member by 04/20/2015.
 - Franchise relates to a bus route contained within one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.
 - Franchise relates to a bus route that crosses one or more borough boundaries and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, also a NYC daily, citywide newspaper on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by ___/___/___ . A notice was posted in the buses operating upon the applicable route.
 - b. Franchise relates to extension of the operating authority of a private bus company that receives a subsidy from the City and, as such, at least 1 business day prior to the public hearing the Agency published a public hearing notice in the City Record on ___/___/___.
3. FCRC conducted a public hearing within 30 days of filing on 05/11/2015.

RESOLUTION

FRANCHISE AND CONCESSION REVIEW COMMITTEE

CITY OF NEW YORK

Cal. No. 7

In the matter of approval of a proposed telecommunications services franchise agreement (“the Franchise Agreement”) between the City of New York and Phoenix Fiber Network, LLC (“Phoenix”).

WHEREAS, pursuant to Authorizing Resolution 1909, (adopted by New York City Council on August 22, 2013), the New York City Department of Information Technology and Telecommunications (“DoITT”) issued a solicitation on April 13, 2015 for franchises for the provision of telecommunications services, as permitted by said Authorizing Resolution; and

WHEREAS, Phoenix responded to said solicitation, informing DoITT of its intent to acquire, rehabilitate and utilize dormant fiber; and

WHEREAS, the FCRC held a public hearing regarding the proposed Franchise Agreement on May 11, 2015 and said hearing was closed on that date.

NOW, THEREFORE, BE IT

RESOLVED, that the Franchise and Concession Review Committee does hereby approve the proposed Franchise Agreement between the City of New York and Phoenix Fiber Network, LLC.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON:

May 13, 2015

Date: _____

Signed _____

Title: Director of the Mayor’s Office of Contract Services

RECOMMENDATION FOR APPROVAL OF FRANCHISE AGREEMENT MEMORANDUM
Telecommunications Franchise

Instructions: Check all applicable boxes and provide all applicable information requested below. If any requested date or information is unavailable, describe the reason it cannot be ascertained.

A. AUTHORIZING RESOLUTION (Attach copy)

1. Mayor's Office of Legislative Affairs transmitted proposed authorizing resolution to City Council.
2. City Council conducted public hearing on 05/13/2013.
3. City Council adopted authorizing resolution on 08/22/2013.

B. SOLICITATION/EVALUATION/AWARD

1. RFP/solicitation document issued on: 04/13/2015. (Attach copy)
2. The Agency certifies that it complied with all the procedures for the solicitation, evaluation and/or award of the subject franchise as set forth in the applicable authorizing resolution and request for proposals, if applicable.

Basis for Renewal: (Attach copies of at least top three rated proposals, if applicable.)

Instructions: Check applicable box below; attach a Summary Rating sheet (for each competition pool) reflecting, as applicable:

- List of proposers in descending order of initial overall score, or if applicable, final overall score
 - For each proposer – 1) initial, and if applicable, final overall score and scores for each evaluated criterion (show scores at each evaluation stage); and 2) initial, and if applicable, final proposed revenue amount (or attach detailed documentation of revenue formula).
 - If applicable, identify the proposer(s) determined to be in the competitive range of technically viable proposals ("short list").
 - Attach list of proposed franchisee's Board of Directors.
- Recommended franchisee is highest rated proposer and offered highest amount of revenue (overall or for the competition pool).
- Recommended franchisee was sole proposer or was determined to be only responsive proposer (overall or for the competition pool), and the and agency certifies that a sufficient number of other entities had a reasonable opportunity to propose, the recommended franchisee meets the minimum requirements of the RFP or other solicitation and award is in the best interest of the City.
Explain:
- The subject franchise is a non-exclusive franchise and the franchisee has been determined to be both technically qualified and responsible.
- Other ***Describe:***

C. PUBLIC HEARING & APPROVAL

1. Agency filed proposed agreement with FCRC on 4/27/2015.
2. Public Hearing Notice
 - a. Agency published, for at least 15 business days immediately prior to the public hearing, a public hearing notice and summary of the terms and conditions of the agreement in the City Record from 04/20/2015 - 05/11/2015.
 - b. Agency provided written notice containing a summary of the terms and conditions of the agreement to each affected CB and BP by 04/20/2015. (Check the applicable box below and provide the requested information)
 - Franchise relates to property in one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.
 - Franchise relates to property in more than one borough and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the agreement twice in New York Post, a NYC daily, citywide newspaper on 04/22/2015 and 04/23/2015, and in Metro, also a NYC daily, citywide newspaper on 04/22/2015 and 04/23/2015. A copy of each such notice containing a summary of the terms and conditions of the subject agreement was sent to each affected CB, each affected BP and each affected Council Member by 04/20/2015.
 - Franchise relates to a bus route contained within one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___/___/___.
 - Franchise relates to a bus route that crosses one or more borough boundaries and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___/___/___ and ___/___/___, and in _____, also a NYC daily, citywide newspaper on ___/___/___ and ___/___/___ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by ___/___/___ . A notice was posted in the buses operating upon the applicable route.
 - b. Franchise relates to extension of the operating authority of a private bus company that receives a subsidy from the City and, as such, at least 1 business day prior to the public hearing the Agency published a public hearing notice in the City Record on ___/___/___.
3. FCRC conducted a public hearing within 30 days of filing on 05/11/2015.



Legislation Text

File #: Res 1909-2013, Version: *

THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 1909
L.U. No. 821

CITYWIDE

20135563 GFY

Resolution authorizing franchises for telecommunications services.

By City Council Members Comrie and Weprin (at the 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 telecommunications services; and

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

WHEREAS, the Council has determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and stimulate commerce by assuring the widespread availability of telecommunications services;

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 cable, wire or optical fiber and associated equipment on over and under the inalienable property of the City (including through pipes, conduits, sewers and similar improvements thereto) to be used in providing one or more telecommunications services (as that term is defined in Section C. of this resolution) in the City.
- 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. The public services to be provided under such franchises shall be one or more "telecommunications services", defined for purposes of this resolution as the transmission of voice, data, information service and/or video signals, or any other form of wire communications or radio communications (as such terms are defined in subsections (40) and (59) of Section 3 of the federal Communications Act of 1934, as amended, or successor provisions thereto) but for purposes of this resolution "telecommunications services" shall not include any of the following: (i) "cable television services" as defined in the authorizing resolution adopted by the Council on May 15, 2012 as Resolution No. 1334, or any successor resolution thereto; (ii) "mobile telecommunications services" as defined in the authorizing resolution adopted by the Council on August 25, 2010 as Resolution No. 191 or any successor resolution thereto; and (iii) "public pay telephones" as defined in the authorizing resolution adopted by the Council on December 21, 2009 as Resolution No. 2309 or any successor resolution thereto.
- D. All franchises granted pursuant to this resolution shall require the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.
- E. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this

resolution was 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 criteria to be used by the Department of Information Technology and Telecommunications to evaluate response 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 to be paid to the City, and
- (2) The ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise and in a manner consistent with the City’s management of the public rights-of-way.

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 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 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 the provision of facilities or services to the City 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 at the direction of the Department of Information Technology and Telecommunications;
- (6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;
- (7) all franchisees shall be required to maintain complete and accurate books of account and records for purposes of reviewing and/or enforcing 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 that include 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 ensure adequate oversight of the franchisee’s performance of its franchise obligations;

- (12) 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;
- (13) 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;
- (14) all franchisees shall have been subject, prior to the commencement of the franchise term, to review under the City's Vendor Information Exchange System ("VENDEX") or any successor system;
- (15) all franchisees shall include provisions incorporating the MacBride Principles;
- (16) 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;
- (17) there shall be provisions requiring the franchisee to protect the property of the city, and the delivery of public services through, along or across such property, from damage or interruption of operation, as a result of the construction, operation, maintenance, repair and/or removal of franchisee's facilities in the inalienable property of the City; and
- (18) there shall be provisions designed to minimize the extent to which the public use of the street of the City are disrupted in connection with the construction, installation, use operation, maintenance and/or removal of franchisee's facilities in the inalienable property.

H. 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) within (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution; and
- (3) on or before July 1 of each year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution during the preceding calendar year.

I. If any clause, sentence, paragraph, section or part of this resolution shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this resolution or the application thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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 22, 2013, on file in this office.

.....
City Clerk, Clerk of The Council

FRANCHISE AGREEMENT

Between

THE CITY OF NEW YORK

And

PHOENIX FIBER NETWORK, LLC

Information Services Franchise

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APPENDICES

- APPENDIX A CONSTRUCTION TERMS
- APPENDIX B NON-MONETARY COMPENSATION
- APPENDIX C STANDARD CITY CONTRACT PROVISIONS
- APPENDIX D COMPANY CONTROL AS OF EFFECTIVE DATE AND PERMITTED TRANSFERS
- APPENDIX E CERTIFICATION BY INSURANCE BROKER

DRAFT

THIS AGREEMENT, dated as of the ___ day of ___, 2015 (the “Execution Date”), is by and between THE CITY OF NEW YORK (as defined in Section 1 hereof, the “City”) and PHOENIX FIBER NETWORK, LLC, a Delaware limited liability company whose principal place of business is located at 2187 Atlantic Street, Stamford, CT 06092 (as defined in Section 1 hereof, the “Company”), (each, a “party” and collectively, the “parties”).

WITNESSETH:

WHEREAS, the New York City Department of Information Technology and Telecommunications (as defined in Section 1 hereof, “DoITT”), on behalf of the City, has the authority to grant franchises (“Franchises”) involving the occupation or use of the Inalienable Property (as defined in Section 1 hereof) of the City in connection with the provision of Information Services (as defined in Section 1 hereof); and

WHEREAS, the Company has submitted to DoITT its proposal to obtain a Franchise in response to a solicitation issued by DoITT pursuant to Resolution Number 1909 (adopted by the New York City Council on August 22, 2013); and

WHEREAS, on [●], 2015 the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the “FCRC”) held a public hearing on a proposed Franchise to install, operate and maintain cable, wire, fiber optic telecommunications cable (or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable for the same purposes) and related equipment and facilities within the City’s Inalienable Property to be used in providing Information Services, which hearing was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the City Charter; and

WHEREAS, DoITT has with respect to the proposed Franchise complied with the New York State Environmental Quality Act (“SEQRA”) (Section 8-010 et. seq.) of the New York State Environmental Conservation Law), the SEQRA regulations set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York); and

WHEREAS, the New York City Department of City Planning determined that the proposed Franchise would not have land use impacts or implications and that therefore the proposed Franchise is not subject to the Uniform Land Use Review Procedure set forth in Section 197-c of the New York City Charter;

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1 DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives will have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

1.1 “Affiliate” means each Person who directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, the Company.

1.2 “Agreement” means this agreement, together with the Appendices attached hereto and all amendments, modifications or renewals hereof or thereof.

1.3 “Block” has the meaning set forth therefor in Section 3.2 hereof.

1.4 “Block Linear Feet” has the meaning set forth therefor in Section 3.2 hereof.

1.5 “Cable Television Service” means “cable service” as that term is defined, as of the Effective Date, in 47 USC Section 522 (6).

1.6 “Cable Television Franchise” means a franchise granted by the City expressly authorizing the use of the Inalienable Property for the provision of Cable Television Service to Residents.

1.7 “City” means the City of New York or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department or any other entity of the City of New York, or any authorized officer, official, employee or agent thereof, or any successor thereto.

1.8 “Commissioner” means the Commissioner of DoITT, or his or her designee, or any successor in function to the Commissioner.

1.9 “Company” means Phoenix Fiber Network, LLC, a limited liability company organized and existing under the laws of the state of Delaware and authorized to do business in the State of New York, whose principal place of business is located at 2187 Atlantic Street, Stamford, CT 06092, or a successor entity thereto permitted as provided in Section 7 hereof.

1.10 “Comptroller” means the Comptroller of the City, the Comptroller’s designee, or any successor in function to the Comptroller.

1.11 “Control” of an entity, business or asset means the power (de facto or de jure) to direct or cause the direction of the management and policies of or related to such entity, business or asset, whether such power is exercisable directly or through intermediate entities.

1.12 “CPI Adjustment” applied to a dollar amount for purposes of calculating a payment means an adjustment in which said dollar amount is multiplied by a fraction, the numerator of which is the Consumer Price Index (All Urban Consumers, All Items, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 1982-84=100) announced by the U.S. Department of Labor for the month prior to the month in which said payment is to be made and the denominator of

which is the same index announced by the U.S. Department of Labor for the month in which the Effective Date occurred. If the U.S. government no longer announces an index as described in the preceding sentence, the City will select an alternative index that is expected to be as comparable as practicable in its effect as the index described in the preceding sentence would have been.

1.13 “Credit Support” means a letter of credit, security deposit, or comparable form of equivalent financial assurance.

1.14 “DoITT” means the Department of Information Technology and Telecommunications of the City of New York, or any successor thereto.

1.15 “Effective Date” means the date stated in a notice issued by the City to the Company, which date will be ten (10) days after the first date on which all of the following conditions have been met: (a) this Agreement has been registered with the Comptroller as provided in Sections 375 and 93.p. of the City Charter, (b) all documents have been submitted as required by Section 2.2 hereof, (c) the City’s Vendex review process (if lawfully applicable to franchises of the type covered by this Agreement) with respect to the Company has been completed without disqualifying information having arisen, (d) the Initial Payment described in Section 3.3 hereof has been paid to the City, (e) the Credit Support has been arranged by the Company and is available to the City in accordance with the terms and conditions of this Agreement and (f) payment has been made of an amount sufficient to pay, or reimburse the City for, all costs incurred in publishing the legally required notice(s) with respect to the FCRC’s hearing regarding the Franchise granted by this Agreement.

1.16 “FCC” means the Federal Communications Commission, or any successor thereto.

1.17 “FCRC” means the Franchise and Concession Review Committee of the City of New York, or any successor thereto.

1.18 “Franchise Area” means the City of New York.

1.19 “Inalienable Property” means that property of the City which is inalienable pursuant to Section 383 of the New York City Charter or a successor provision thereto. References to the Inalienable Property in this Agreement will be deemed to include the space on, over and under the surface of the Inalienable Property (except that where the City’s property rights to such Inalienable Property is expressly limited in a particular case to specified dimensional boundaries then such references shall be limited, in regard to such particular property, as thus expressly limited).

1.20 “Indemnities” has the meaning set forth therefor in Section 8.1 hereof.

1.21 “Information Services” has the meaning set forth therefor in 47 USC Section 153 (24) as of the Effective Date.

1.22 “Initial Payment” means the payment due as provided in Section 3.3.1 hereof.

1.23 “Installation Area” has the meaning set forth therefor in Section 3.2.3 hereof.

1.24 “Mayor” means the chief executive officer of the City, the designee thereof, or any successor to the executive powers thereof.

1.25 “New Franchisee” means an entity that is not, as of the Effective Date, operating under the Franchise granted by this Agreement any facilities which have been installed in the Inalienable Property prior to the Effective Date either pursuant to a previous or other franchise from the City or otherwise.

1.26 “Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

1.27 “Phased Adjustment” has the meaning set forth therefor in Section 3.2.4 hereof.

1.28 “Pre-Credit Amount” has the meaning set forth therefor in Section 3.2 hereof.

1.29 “PSC” means the New York State Public Service Commission or any successor thereto.

1.30 “Resident” means an occupant who: (i) resides in a dwelling which has or is entitled to receive from the City a residential certificate of occupancy, including, without limitation, a private dwelling, class A multiple dwelling, or an interim multiple dwelling or (ii) has continuously resided in the same buildings as a permanent resident and who takes occupancy pursuant to a lease (or other similar arrangement) of at least six (6) months duration. For purposes of this Agreement, the terms “private dwelling,” “class A multiple dwelling,” and “interim multiple dwelling” shall have the same meaning as they may have in the New York State Multiple Dwelling Law, as such law may from time to time be amended.

1.31 “Security Fund” has the meaning set forth therefor in Section 5.1 hereof.

1.32 “Service” or “Information Service” means “information service” as that term is defined, as of the Effective Date, in 47 USC Section 153(24).

1.33 “Stub Adjustment” has the meaning set forth therefor in Section 3.2.2(b) hereof.

1.34 “System” means the cable, wire, fiber optic telecommunications cable (or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable for the same purposes), and related equipment and facilities, within the Inalienable Property, used by the Company to provide the Information Services.

1.35 “Telecommunications Service” means “telecommunications service” as that term is defined, as of the Effective Date, in 47 USC Section 153 (53).

1.36 “Telecommunications Service Franchise” means a franchise granted by the City expressly authorizing the use of the Inalienable Property for the provision of Telecommunications Service.

1.37 “Term” has the meaning set forth therefor in Section 2.1 hereof.

SECTION 2 GRANT OF AUTHORITY

2.1 Term. This Agreement and the franchise granted hereunder, will commence upon the Effective Date, and will continue until and including June 30, 2021, unless earlier terminated as described herein. The period of time that this Agreement remains in effect is herein referred to as the "Term."

2.2 Conditions to Effectiveness.

2.2.1 Certain Actions by the Company Before Effective Date. As provided in Section 1.14 above, the occurrence of the Effective Date is conditional on, among other things, the submission to the City by the Company of certain documents as described in this Section 2.2. Said documents are (a) evidence as described in Section 8.6.1 below of the Company's liability insurance coverage pursuant to Section 8 hereof; (b) an opinion of the Company's counsel dated as of the date this Agreement is executed by the Company, in form reasonably satisfactory to the City, (c) an affirmation signed by an authorized officer or representative of the Company in the form set forth in the solicitation issued by DoITT seeking a proposal from the Company for the Franchise granted hereunder; (d) an IRS W-9 form certifying the Company's tax identification number; (e) organizational and authorizing documents as described in Sections 10.5.1 and 10.5.2 hereof; (f) documentation verifying that the Company has completed all required submissions under the City's VENDEX process, and the City's review thereof has been completed; and (g) documentation verifying that the City's review of the Company's submissions pursuant to Local Law 34 of 2007 has been completed and the City has found that the Company is in compliance with the requirements of said Local Law 34. The City will issue a notice to the Company setting forth the Effective Date, such notice to be issued within ten (10) days of the first date on which all required conditions to occurrence of the Effective Date, as set forth in this Section 2.2 and in Section 1.15 above, have been met.

2.3 Nature of Franchise, Effect of Termination and Renewal.

2.3.1 Nature of Franchise. The City hereby grants the Company, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the Company with the right and the City's consent to install, operate, repair, maintain, remove and replace the System (authorization to install non-closed path transmission facilities, such as antennae and similar equipment which transmits or receives information wirelessly, within the Inalienable Property is not granted pursuant to this Agreement, although the Company is permitted to separately seek a franchise granting such authorization). The Franchise granted hereunder does not include the right or consent to install, maintain or operate any computer kiosks or other similar facilities within the Inalienable Property of the City the purpose of which is the reception and use of Information Services, or any other service, by pedestrians, vehicles or other users or occupants of the Inalienable Property, although the Company is permitted to separately seek authority from the City granting such authorization. The Franchise granted hereunder does not include the right or consent to use the Inalienable Property of the City for the transmission of Cable Television Service or Telecommunications Service, unless such authority is expressly granted hereinafter, although to the extent not thus expressly granted hereinafter, the Company is permitted to separately seek authority from the City granting such authorization.

2.3.2 Effect of Termination. Upon termination of this Agreement, the Franchise granted hereunder will expire; all rights of the Company in such Franchise will cease, with no value allocable to such Franchise; and the rights of the City and the Company to the System, or any part thereof, will be determined as provided in Section 10.8 hereof. The termination of this Agreement and the Franchise granted hereunder may not, for any reason, operate as a waiver or release of any obligation of the Company or any other Person, as applicable, for any liability (i) pursuant to Section 8.1 hereof, which arose or arises out of any act or failure to act required hereunder prior to the termination; (ii) which exists pursuant to Sections 3 (“Compensation”), 6.5.2 (“Right of Inspection”), 10.8 (“Rights Upon Termination”), 10.13 (“Governing Law”) and 10.16 (“Claims Under Agreement”) hereof; and (iii) to maintain in full force and effect the Security Fund described in Section 5 hereof and the coverage under the liability insurance policies required under and in accordance with Section 8 hereof.

2.3.3 Renewal Option. (a) For purposes of this Section 2.3.3, the following terms shall be defined as follows: A “Recent Franchise Agreement” shall mean any written franchise agreement entered into by the City and authorizing a franchisee to use the Inalienable Property for purposes comparable to those described in Section 2.3.1 provided that the date on which such agreement first became effective is between July 1, 2019 and the date the Company chooses to exercise the option which is described in this Section 2.3.3 below. A “Recent Franchisee” is a franchisee under a Recent Franchise Agreement. If there are no Recent Franchise Agreements in existence as of January 1, 2021, then the period during which a franchise agreement falls within the definition of a Recent Franchise Agreement shall be deemed to extend back in time an additional one year (to July 1, 2018), and if that still does not result in at least one Recent Franchise Agreement, then that time period shall further extend back in additional one-year increments until at least one franchise agreement falls within the definition of a Recent Franchise Agreement. A franchise agreement may be considered a Recent Franchise Agreement even if it is entered into with a franchisee that held a previous franchise from the City and even if the facilities in the Inalienable Property authorized thereby were previously authorized under a previous franchise from the City.

(b) During the period beginning October 1, 2020 and ending April 1, 2021, the Company shall (provided it is not then in default of any of its material obligations under this Agreement) have the option to extend the scheduled end date of the Term from June 30, 2021 to the fifteenth (15th) anniversary of the Effective Date (along with a comparable extension of the term of the Company’s Telecommunications Service Franchise as described therein), provided that if the Company exercises such option, then beginning July 1, 2021, the terms and conditions of this Agreement shall, at the City’s option, be deemed to be revised to match those of that Recent Franchise Agreement the Recent Franchisee under which most closely most matches the Company, based on the standards set forth in clauses (i) through (viii) below of this subsection (b). Failure to exercise such option by the Company shall not bar the Company and the City (each acting with the fullest amount of discretion authorized by applicable law) from reaching a mutual agreement to authorize the Company to continue to use the City’s rights of way for the provision of Information Services after July 1, 2021 upon terms and conditions agreed to by the City and the Company.

The standards to be applied in determining which Recent Franchisee most closely matches the Company shall be as follows:

(i) the degree to which the purposes described in Section 2.3.1, or provision of comparable effect, in the Recent Franchisee's Recent Franchise Agreement matches the purposes described in Section 2.3.1 hereof;

(ii) the length of time the Recent Franchisee, or its affiliates or predecessors in interest, have had to amortize its or their investment in the facilities installed in the Inalienable Property pursuant to franchise rights granted by the City;

(iii) the size of the Recent Franchisee, measured on an invested-capital basis;

(iv) the extent of the installation by the Recent Franchisee in the Inalienable Property of cable, wire, fiber optic telecommunications cable or other closed-path transmission medium as part of its Information Services system;

(v) the types and forms of Information Services being generally offered by the Recent Franchisee and the type of ultimate end-user customer base and mix of customers for such services;

(vi) the percentage of the Recent Franchisee's Information Services provided on a wholesale basis to third-party providers of retail services;

(vii) the degree to which the provision of Information Services constitutes the primary business activity of the Recent Franchisee; and

(viii) the degree to which there are material extrinsic circumstances (e.g., governmental grant, subsidy or other assistance, or tax exemption) existing in favor of the Recent Franchisee.

If the Company and the City cannot agree which Recent Franchisee most closely matches the Company, then an arbitrator shall make such determination, such arbitrator to be selected by the City with the approval of the Company not to be unreasonably withheld, which arbitrator shall make such determination following procedures of the American Arbitration Association.

2.3.4 Other Renewal. Except as expressly set forth in the preceding Section 2.3.3, this Agreement does not grant to the Company any right to renewal of this Agreement or the franchise granted hereunder. At the end of the Term, the City will have the discretion to renew this Agreement, or not, subject only to such limitations on such discretion as may exist under applicable state and/or federal law.

2.4 Conditions and Limitations on Franchise.

2.4.1 Not Exclusive. Nothing in this Agreement affects the right of the City to grant to any Person a franchise, consent or right to occupy and use Inalienable Property, or any part thereof, for the construction, operation and/or maintenance of a system in order to provide Information Services in the City for any purpose, or the right of the City (i) to construct, operate and/or maintain a system to provide Information Services in the City or (ii) to acquire, in accordance with Section 10.08 below, and operate the System.

2.4.2 Construction of System.

(a) The Company shall use commercially reasonable efforts to coordinate (and in any event comply with all legal requirements, if any, to so coordinate) its construction schedule with the appropriate City agencies, including, without limitation, the Department of Transportation, the appropriate Borough Engineer and the Office of Construction, to minimize unnecessary disruption.

(b) The Company shall obtain all construction, building, street opening or other permits or approvals necessary before installing the System. The Company shall provide copies of any such permits and approvals to DoITT promptly following receipt of a request therefor.

(c) Construction within the Inalienable Property which falls within the boundaries of New York City park land will be subject to the approval of the City's Department of Parks and Recreation (or successor agency), acting with the fullest discretion permitted by law, and such discretion is a limit on the scope of the Franchise covered hereby. Construction within the Inalienable Property which falls within the boundaries of New York City waterfront or wharf property as defined in Section 1150 of the New York City Charter will be subject to the approval of the City's Department of Transportation or Department of Small Business Services, whichever has jurisdiction over the particular property under City law, or the appropriate successor agency, acting with the fullest discretion permitted by law, and such discretion is a limit on the scope of the Franchise covered hereby. To the extent that such construction activity within park, wharf or waterfront property would temporarily materially interfere with the use of such property for park, wharf or waterfront use, as the case may be, the responsible agency may require reasonable compensation to the City for such interference (in addition to, and not in lieu of, the reasonable compensation for use of the Inalienable Property generally under this Agreement as set forth in Section 3 hereof) to the fullest extent permitted by law.

SECTION 3 COMPENSATION

3.1 Compensation. The Company agrees to provide reasonable compensation to the City, in return for the benefit conferred by the City of the Franchise to use the Inalienable Property for the purpose of offering and providing Information Services, to be as described in this Section 3.

3.2 Monetary Compensation.

3.2.1 As a Franchise fee to be paid as compensation in exchange for the benefit and privilege of using the Inalienable Property for the purpose of offering and providing Information

Services, the Company shall pay to the City the following amount per calendar quarter or portion thereof:

(a) the excess, if any, of the applicable Pre-Credit Amount (as calculated pursuant to Sections 3.2.2(a) and 3.2.2(b) hereof), over the sum of (x) any amounts paid by the Company to the City, with respect to the facilities over which Information Services are being offered to the public pursuant to this Agreement, as franchise compensation under any Cable Television Franchise held by the Company which compensation is attributable to the same calendar quarter or portion thereof, plus (y) any amounts paid by the Company to the City, with respect to the facilities over which Information Services are being offered to the public pursuant to this Agreement, as franchise compensation under any Telecommunications Services Franchise held by the Company which compensation is attributable to the same calendar quarter or portion thereof, but

(b) in no event less than the product of \$70,000 multiplied by the CPI Adjustment (except that if the Company is a New Franchisee said \$70,000 figure shall be reduced to \$5,000 until but not including the first anniversary of the Effective Date, \$15,000 from the first anniversary of the Effective Date until but not including the second anniversary of the Effective Date, and \$35,000 from the second anniversary of the Effective Date until but not including the third anniversary of the Effective Date).

Notwithstanding the preceding however, if the Company is a New Franchisee, then the amount payable under this Section 3.2.1 with respect to the first eighteen months of the Term shall not be, as to any calendar quarter, greater than the amount described in paragraph (b) above with respect to that quarter (even if the amount described in paragraph (a) above for such quarter would be greater the paragraph (b) amount for such quarter).

3.2.2 (a) The Pre-Credit Amount with respect to any full calendar quarter equals thirty-eight (38) cents (adjusted each quarter by the Phased Adjustment as defined below) per calendar quarter per foot of Installation Area, as that term is defined below, with respect to Installation Area located in the borough of Manhattan and equals thirty-three (33) cents (adjusted each quarter by the Phased Adjustment as defined below) per calendar quarter per foot of Installation Area, as that term is defined below, with respect to Installation Area located in the boroughs of the Bronx, Brooklyn, Queens and Staten Island. The references to thirty-eight (38) cents and thirty-three (33) cents in this paragraph are based on the assumption that this Franchise Agreement first becomes effective during the second quarter of calendar year 2015. Should this Franchise Agreement first become effective after June 30, 2015, said references to thirty-eight (38) cents and thirty-three (33) cents in this subsection shall each be deemed increased by two cents for each full calendar quarter, beginning with the second calendar quarter of calendar year 2015, which has elapsed prior to this Franchise Agreement becoming effective.

(b) The Pre-Credit Amount with respect to any period of less than a full quarter shall be calculated by multiplying the Pre-Credit Amount for a full calendar quarter by the Stub Adjustment. The Stub Adjustment for any period less than a full calendar quarter is the percentage equal to the number of days in the applicable period divided by 90.

3.2.3 The “Installation Area” is defined pursuant to the following provisions:

(a) Unless the Company submits documentation as described in Section 3.2.3(b) below, the Installation Area in each borough or portion thereof will be calculated by adding together the Block Linear Feet applicable to every Block in such borough or portion thereof in which the Company has the System within the Inalienable Property. “Block Linear Feet” applicable to any Block in the City means the number of feet (rounded to the nearest foot) that results by measuring a straight line along the surface of the street from the midpoint of the intersection at one end of the block to the midpoint of the intersection at the other end of the block. A “Block” means a mapped street of the City running from one intersection with another mapped street of the City to the next intersection with another mapped street of the City.

(b) If the Company submits documentation to the City showing to the City’s reasonable satisfaction that, with respect to any particular Block, the portion of the System located therein is located underground and that in length run less than the full Block Linear Feet of such Block, then the Installation Area with respect to the Block will be adjusted to the actual length of such facilities in lieu of the full Block Linear Feet of the Block.

(c) If the Company maintains multiple systems at any Block, as a result of, for example, multiple systems having been originally constructed for different owners which have come or hereafter subsequently come under the common ownership of the Company, then the Installation Area will be calculated separately with respect to each such system, and the sum of the multiple Installation Areas is to be applied in the calculation of the Pre-Credit Amount as described above.

(d) To the extent the Company installs or has installed facilities on a bridge or in a tunnel which is part of the Inalienable Property, the Installation Area shall include the length of the bridge or tunnel, or portion thereof, in which the Company’s facilities run and which are within the Inalienable Property. If such bridge or tunnel connects between the borough of Manhattan and another borough, the Installation Area with respect to the bridge or tunnel shall be deemed to be within Manhattan to the geographic midpoint between the bulkhead line on the Manhattan side and the bulkhead line on the other borough side when run along the line of the bridge or tunnel.

3.2.4 The “Phased Adjustment” means an increase, with respect to each calendar quarter after the first full calendar quarter to occur during the Term, in the amount of two cents (\$.02), such that, for example, with respect to the (i) second full quarter to occur during the Term, the Pre-Credit Amount will be forty (40) cents per calendar quarter per foot of Installation Area in Manhattan and thirty-five (35) cents per calendar quarter per foot of Installation Area in Staten Island, Queens, Brooklyn and the Bronx, (ii) the third full quarter to occur during the Term, the Pre-Credit Amount will be forty-two (42) cents per calendar quarter per foot of Installation Area in Manhattan and thirty-seven (37) cents per calendar quarter per foot of Installation Area in Staten Island, Queens, Brooklyn and the Bronx, with each Phased Adjustment becoming applicable at the beginning of each calendar quarter throughout the Term. The illustrative references in the preceding sentence to forty (40) cents, forty-two (42) cents, thirty-five (35) cents and thirty-seven (37) cents are based on the assumption that this Agreement

first becomes effective during the second quarter of calendar year 2015. Should this Agreement first become effective after June 30, 2015, each of said references in the preceding sentence shall be deemed increased by two cents for each full calendar quarter, beginning with the second calendar quarter of calendar year 2015, which has fully elapsed prior to this Franchise Agreement becoming effective.

The application of the Phased Adjustment increases quarterly through June 30, 2021 as described in this Section 3.2.4 is not intended to suggest that further such quarterly increases will continue to be added in the event either the Term is extended beyond June 30, 2021 as contemplated in Section 2.3.3 above or if the term of the franchise granted hereunder is otherwise renewed, it being the current intention of the parties that franchise compensation during any term beyond June 30, 2021 will be determined pursuant to the process provided for in Section 2.3.3 if applicable, or otherwise pursuant to negotiation and applicable law, without reference to any assumption that there would be further application of similar additional phased adjustments that would continue to similarly increase franchise compensation after June 30, 2021.

3.2.5 In the event that the Company or an Affiliate of the Company acts inconsistently with its obligations under Section 8.3.1 of a Cable Television Franchise agreement with the City by reducing amounts paid to the City under said agreement in a manner inconsistent with said section, then notwithstanding any other provision in this Agreement the amount next due to the City under this Section 3.2 will increase above what it would otherwise have been as provided hereunder by an amount equal to the amount the Company or its Affiliate thus reduced its payments to the City in connection with such Cable Television Franchise agreement.

3.3 Timing.

3.3.1 Initial Payment. As a condition of the occurrence of the Effective Date, the Company shall make an initial payment which shall represent the sum of (x) the Company's good faith estimate regarding the amount due under Section 3.2 hereof attributable to the initial partial calendar quarter to occur within the Term ("Initial Partial Payment"), plus (y) the Company's good faith estimate regarding the amount due under Section 3.2 (subject to Section 3.3.2) hereof attributable to the first full calendar quarter to occur within the Term. The Initial Partial Payment shall be determined by calculating a pro-rata amount based on the amount that would be due if such payment were for the first full calendar quarter.

3.3.2 Subsequent Payments. All payments made pursuant to Section 3.2 after the Initial Payment hereof must be made in advance on a quarterly basis no later than forty-five (45) days prior to the beginning of each calendar quarter with respect to which payment has not yet been made. The Company shall in good faith estimate each such quarterly payment based on the Installation Area expected to be applicable to the next quarter. Within one hundred twenty (120) days following the end of each calendar year, the Company shall calculate the exact monetary compensation due to the City pursuant to Section 3.2 hereof for all the calendar quarters of said calendar year. Should the total monetary compensation for such calendar year thus calculated be found to have exceeded the estimated quarterly payments made by the Company for such calendar year, the Company shall, within the 120-day period following the end of the calendar year, remit to the City any balance due. Should the estimated quarterly payments made by the Company for the calendar year be found to have exceeded the total calculated monetary

compensation for the year, the overpayment will constitute a credit against the next payment or payments due from the Company hereunder. However, notwithstanding anything to the contrary in the preceding sentences of this Section 3.3.2, the Company may at its option defer payment (interest-free) of up to \$65,000 of the amount due hereunder with respect to each of the first two full quarterly payments and the Initial Partial Payment (except that in no event shall the Initial Partial Payment actually paid to the City be less than \$5,000, and in the event that the Company elects to defer a portion of the Initial Partial Payment, then only the first full quarterly payment may be deferred in amounts up to \$65,000 in addition to the deferral of the Initial Partial Payment), and up to \$35,000 of the amount due hereunder with respect to the third through sixth full quarterly payments to be made pursuant to this Section 3.3.2 (except that if Company elects to defer payment of a portion of the Initial Partial Payment, then such deferral option for the third through sixth full quarterly payments shall instead be applicable for the second through fifth full quarterly payments). In the event of any such deferrals, the deferred amount with respect to each such quarter shall be due and payable on the third anniversary of the date the deferred amount would have been due had it not been deferred, but in no event later than the last day of the Term.

3.3.3 Early Payment. In any instance where Company is required to make a payment to the City, such payment may be made one year prior to the due date of such payment and without penalty.

3.4 Non-Monetary Compensation. As further compensation in exchange for the benefit and privilege of using the Inalienable Property for the purpose of offering and providing Information Services, the Company shall provide (in addition to and not in lieu of the monetary compensation required pursuant to Section 3.2 above) facilities and services constituting non-monetary compensation to the City as follows:

(a) the Company shall provide the facilities and services described in Appendix B; and

(b) if the System is used in part or in whole to provide Cable Television Service pursuant to one or more Cable Television Franchises, then the Company shall provide free of charge to each “Qualified Location” Internet access equipment and service meeting reasonable specifications intended to meet the needs of the particular location. A “Qualified Location” as that term is used in this section means each building or facility which, pursuant to any Cable Television Franchise under which Cable Television Service is provided in part or in whole using the System, is entitled to receive any Cable Television Service free of charge.

3.5 Records. The Company shall keep comprehensive itemized records of the relevant aspects of its operations in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to this Section 3 is being paid to the City.

3.6 Reservation of Rights. No acceptance of any compensation payment by the City may be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor may such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid, and all representations by the Company as to amounts due hereunder, will be subject to audit by the City.

3.7 Ordinary Business Expense. Nothing contained in this Section 3 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation that it pays pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting said payments from gross income in any City, state, or federal income tax return.

3.8 Costs Related to Company-Sought Transactions. The Company shall, as part of the reasonable compensation payable to the City for use of the Inalienable Property, pay, in addition to and not in lieu of all other reasonable compensation due hereunder, to the City or to third parties, at the direction of DoITT, an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any Company-sought renegotiation, transfer, amendment or other modification of this Agreement or the Franchise granted hereunder during the Term, provided the City has given the Company notice in advance of any work being performed by such third party. Such modifications shall not include the renegotiation, renewal or other modifications that take place at the end of the Term in the normal course of dealing between the City and the Company in anticipation of a possible extension or renewal of the Company's rights. The Company expressly agrees that the payments made pursuant to this Section 3.8 are in addition to and not in lieu of, and may not be offset against, the compensation to be paid to the City by the Company pursuant to other provisions of this Section 3.

3.9 No Credits or Deductions.

(a) The Company, as part and parcel of its agreement hereunder to pay reasonable compensation for the use of the Inalienable Property, expressly acknowledges and agrees that:

(i) the compensation to be provided pursuant to this Section 3 may not be deemed to be in the nature of a tax, and is in addition to any and all taxes or other fees or charges which the Company or any Affiliate must pay to the City or to any state or federal agency or authority, all of which are separate and distinct obligations of the Company; and

(ii) with respect to the Franchise granted pursuant to this Agreement, the Company expressly relinquishes and waives its rights and the rights of any Affiliate to a deduction or other credit pursuant to Section 626 of the New York State Real Property Tax Law and any successor or amendment thereto, and (to the extent such waiver is permitted by law) to any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 3.9; and

(iii) except as might be permitted by Section 3.7, the Company may not, and may not otherwise support any attempt by an Affiliate to, make any claim for any deduction of, or other credit for, all or any part of the amount of the compensation (whether monetary or in-kind), or other consideration to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability or other fees or charges which the Company or any Affiliate is required to pay to the City or other governmental agency; and

(iv) except as might be permitted by Section 3.7, the Company may not, and may not otherwise support any attempt by an Affiliate to, apply or seek to apply all or any part of the amount of the compensation (whether monetary or in-kind) or other consideration to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which are hereby deemed to be separate and distinct obligations of the Company and the Affiliates; and

(v) except as might be permitted by Section 3.7, the Company may not, and may not otherwise support any attempt by an Affiliate to, apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the consideration to be provided pursuant to this Agreement, each of which are hereby deemed to be separate and distinct obligations of the Company and the Affiliates.

(b) In any situation where the Company believes the effect of this Section 3.9 is unduly harming, in a manner inconsistent with the intent of this Section 3.9, an Affiliate of the Company or the Company may petition the Commissioner for relief, and such relief will not be unreasonably withheld.

3.10 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon will accrue from such date until received at a rate equal to the rate of interest then in effect that would be charged by the City for late payments of water charges of a comparable amount.

3.11 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement must be paid to the City's Department of Finance and must be sent to DoITT, c/o Director of Franchise Audits and Revenue, 2 Metrotech Center, 4th Floor, Brooklyn, New York 11201, or to such alternative payee and/or address as DoITT may designate by written notice to the Company from time to time.

3.12 Continuing Obligation and Holdover. In the event the Company continues to operate within the Inalienable Property all or any part of the System after the Term for the purpose of providing Information Services, then (a) the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation may not be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the Term, including, but not limited to, damages and restitution and (b) in addition to all other remedies available to the City under this Agreement or by law, the Company shall also pay to the City all payments that the City is entitled to receive under this Agreement including, but not limited to, the compensation set forth in this Section 3 as if the Term remained in effect.

SECTION 4 CONSTRUCTION AND MAINTENANCE REQUIREMENTS

4.1 Generally. The Company agrees to exercise its right described in Section 2.3.1 above in accordance with the standards of work and operation as set forth in this Section 4 and Appendix A attached hereto and incorporated herein. The facilities to be installed in the Inalienable Property pursuant to this Agreement are not to materially exceed in size or otherwise differ in the nature of the imposition placed on the Inalienable Property from that which is standard in the industry with respect to the provision of the Information Services. To the extent that the Company seeks to install or maintain facilities that exceed such standard, the City reserves the right to require the Company to obtain additional authority from the City to do so as such authority is not being granted by the Franchise covered hereby.

4.2 Quality. In order to assure that the Inalienable Property and its continuing use by the public is adequately protected, all work involved in the construction, operation, maintenance, repair, upgrade and removal of the System located within the Inalienable Property must be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by any entity with applicable authority or jurisdiction that any part of the System located within the Inalienable Property is harmful to the public health or safety, then the Company shall, at its own cost and expense, take all steps necessary to correct all such conditions.

4.3 Licenses and Permits. In order to assure that the Inalienable Property and its continuing use by the public is adequately protected, the Company has the sole responsibility for diligently obtaining, at its own cost and expense, and thereafter complying with, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, upgrade or repair the System located within the Inalienable Property, including, but not limited to, any necessary approvals from Persons to use any privately-owned equipment or other property (including, without limitation, any privately-owned easements, poles and conduits) located within the Inalienable Property.

4.4 Public Works and Improvements. Nothing in this Agreement shall, and nothing in this Agreement is intended to, abrogate the right of the City to perform, or to arrange to have performed, any public works or public improvements of any description or change, or to arrange to have changed, the grades, lines or boundaries of any Inalienable Property. In the event that the System interferes with the installation, upgrade, construction, operation, maintenance, repair, relocation or removal of such public works or public improvements, or such change in grades, lines or boundaries, then Section 4.7 of this Agreement will apply.

4.5 No Waiver. Nothing in this Agreement may be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require the Company, or other Persons using, constructing or maintaining the System, to secure the appropriate permits or authorizations for such use, provided that (except as set forth in to Section 2.4.2(c)) no fee or charge may be imposed for any such permit or authorization, other than the standard fees or charges generally applicable to all Persons for such permits or authorizations. Any such standard fee or charge may not be an offset against, or in lieu of, the amounts the Company has agreed to pay to the City pursuant to Section 3 of this Agreement.

4.6 Eliminated, Discontinued, Closed Or Demapped Streets Or Other Inalienable Property. In the event that all or any part of the Inalienable Property is eliminated, discontinued, closed or

demapped, or the status of such property otherwise changes so that it is no longer to be included in the category of Inalienable Property, all rights and privileges of the Company acknowledged and recognized pursuant to this Agreement with respect to said (formerly) Inalienable Property, or any part thereof, so eliminated, discontinued, closed, demapped or otherwise recategorized, will cease upon the effective date of such elimination, discontinuance, closing, demapping or other such recategorization and the Company shall at the direction of the City and upon reasonable notice from the City remove any and all or any portion of the System located within such property by a date not later than the effective date of such elimination, discontinuance, closing, demapping or other recategorization or such later date as the City may direct.

4.7 Protection, Relocation, Alteration of the System. In the event that the System interferes with the installation, construction, upgrade, operation, maintenance, repair, relocation or removal of public works or public improvements, or in the event the grades, lines or boundaries of any Inalienable Property are changed at any time during the Term in a manner affecting the System, then the Company shall, at its own cost and expense (unless dedicated funds have been provided to the City by another entity specifically for such purpose), upon reasonable notice from the City, promptly protect or alter or relocate the System, or any part thereof, as directed by the City. In the event that the Company refuses or neglects to so protect, alter or relocate all or part of the System, the City has the right, upon notice by the City, to break through, remove, alter, or relocate all or any part of the System without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.

4.8 City Authority to Move Facilities. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any part of the System within the Inalienable Property, in which event the City will not be liable therefor to the Company. If practicable, the City will notify the Company in writing prior to such cutting or moving, but in any event will notify the Company in writing as soon as possible following any such action.

4.9 Company Required to Move Facilities. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move the System within the Inalienable Property to permit the moving of said structure (provided that for the duration of any period that any portion of the System moved pursuant to this Section 4.9 is out of service as a result of such action by the City, and such out of service status is documented by the Company to the reasonable satisfaction of DoITT, such facilities shall be treated as not “being used for the provision of Information Services” for purposes of the definition of Installation Area set forth in Section 3.2.3 hereof). The Company may impose a reasonable charge on any Person other than the City for any such movement of the System.

4.10 Protect Structures. In connection with the construction, operation, maintenance, repair, upgrade or removal of the System within the Inalienable Property, the Company shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks and historic pavements, as well as all other structures within any designated landmark district. The Company shall obtain the prior approval of the City before undertaking any alteration of any water main, sewerage or drainage system, equipment or facility or any other

municipal structure within the Inalienable Property, required because of the presence of the System. The Company shall make any such alteration at its own cost and expense and in a manner prescribed by the City. The Company agrees to be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Inalienable Property involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company.

4.11 No Obstruction. In connection with the construction, operation, maintenance, upgrade, repair or removal of the System, the Company may not, without the prior consent of the appropriate authorities, obstruct the Inalienable Property, or the subways, railways, passenger travel, river navigation, or other pedestrian or vehicular traffic that is using the Inalienable Property.

4.12 Safety Precautions.

(a) The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites within the Inalienable Property, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting.

(b) The Company agrees to apply for membership in the Mutual Aid and Restoration Consortium (“MARC”) and if accepted for such membership, to execute the then applicable MARC agreement, and be fully active in MARC activities, including participation in MARC alerts, drills and meetings. If it is determined by a court of competent jurisdiction after all appeals have been exhausted that the agreement by the Company described in the preceding sentence is, pursuant to federal law, not enforceable against the Company, then this provision will be severed from this Agreement, and this Agreement will remain in effect as if this provision had not been included.

SECTION 5 SECURITY FUND AND GUARANTY

5.1 General Requirement. Prior to or simultaneously with the execution and delivery of this Agreement, the Company shall have arranged for the Credit Support to be available to the City in an amount equal to the product of four times the portion of the initial payment described in Section 3.3.1 (subject to Section 3.3.2) estimated to be attributable to the first full calendar quarter of the Term but in no event will the initial Credit Support provided to the City be less than \$40,000. The Credit Support must be in a form reasonably satisfactory to the City, and the Credit Support will serve as a security fund (the “Security Fund”), securing the Company’s full payment and performance of its obligations under this Agreement. Throughout the Term, and for one year thereafter, the Company shall maintain the Security Fund in the amount specified in this Section 5.1 provided that each time the monetary compensation payable by the Company to the City under Section 3.2 hereof exceeds the aggregate amount of the Credit Support by at least fifty thousand dollars (\$50,000) during any one calendar year then, within one hundred twenty (120) days of the end of such calendar year, the aggregate amount of the Credit Support must be increased to and maintained (until any future such increase) at an amount equal to said compensation for such year rounded up to the next non-fractional multiple of one hundred

thousand dollars (\$100,000). Notwithstanding anything to the contrary in the preceding sentence, in no event shall the Security Fund in place after the one hundred twentieth (120th) day of any calendar year be less than the amount applicable to such calendar year under Section 3.2.1(b) above.

5.2 Purpose. The Security Fund will serve as security for full payment and performance by the Company in accordance with this Agreement and any costs, losses or damages incurred by the City as a result of any failure by the Company to abide by any provision or provisions of this Agreement.

5.3 Withdrawals from the Security Fund. In the circumstances described in Section 9.3 hereof, the City may withdraw from the Security Fund such amount as necessary to satisfy (to the degree possible) the Company's obligations not otherwise met (and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to meet its obligations), provided, however, that the City may not make any withdrawal by reason of any breach or default of which the Company has not been given notice. The City may not seek recourse against the Security Fund for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company.

5.4 Notice of Withdrawals. Within one (1) week after any withdrawal from the Security Fund, the City shall notify the Company of the date and amount thereof. The withdrawal of amounts from the Security Fund will constitute a credit against the amount of the applicable liability of the Company to the City but only to the extent of said withdrawal.

5.5 Replenishment by the Company. Within thirty (30) days after receipt of notice from the City that any amount has been withdrawn from the Security Fund, as provided in Section 5.4 hereof, the Company shall replenish the Security Fund to the amount specified in Section 5.1 hereof, by submitting such documentation as may be necessary to restore the Credit Support which constitutes the Security Fund to the full amount required by Section 5.1. If the Company has not made the required replenishment of the Security Fund within such thirty (30) day period, liquidated damages for such failure will accrue at the rate specified in Section 3.10 hereof, such accrual to commence at the end of such 30-day period, and which liquidated damages shall be payable to the City as reasonable compensation to the City for its loss of securitization for the Company's obligations hereunder.

5.6 Replenishment by the City. If a court finally determines that a withdrawal from the Security Fund by the City was improper, the City shall refund the improperly withdrawn amount to the Company such that the balance in the Security Fund will not exceed the amount specified in Section 5.1 hereof.

5.7 Not a Limit on Liability. The Company's obligations of payment and performance, and the liability of the Company pursuant to this Agreement, will not be limited by the amount of the Security Fund required by this Section 5.

5.8 Renewal. Any letter of credit that is to constitute the Security Fund required hereunder must provide that it will not be cancelled, and will not expire without renewal, except after at least sixty (60) days' notice to the City of the impending cancellation, or expiration without

renewal, of such letter of credit. Any failure to replace or renew a Security Fund letter of credit by a date which is thirty (30) days prior to the impending cancellation or expiration of such a letter of credit will constitute an Event of Default under this Agreement, which the City may cure by (a) drawing on the Security Fund and itself holding the proceeds as a replacement Security Fund (with all rights to draw on the proceeds for Security Fund purposes as provided under this Agreement) until such time as the Company completes the required letter of credit replacement or renewal or (b) exercising any other lawful remedy or remedies. Interest earned on proceeds held by the City as a replacement Security Fund will be retained by the City.

SECTION 6 RIGHT OF WAY MANAGEMENT IMPLEMENTATION MATTERS

6.1 Protection from Disclosure. To the extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information submitted to or made available by the Company to the City under this Agreement, provided that the Company notifies the City of, and clearly labels, the information which the Company deems to be confidential, proprietary information as such. Such notification and labeling will be the sole responsibility of the Company.

6.2 Management and Records. To the extent necessary to preserve, protect and otherwise manage the Inalienable Property, the City will have the right to oversee, regulate and inspect periodically the construction, maintenance, operation and upgrade of the System located within the Inalienable Property, including any part thereof, in accordance with the provisions of this Agreement and applicable law. To the extent consistent with the City's right to thus preserve, protect and otherwise manage the Inalienable Property, and/or the City's right to assure that it is being and will be paid the compensation due under this Agreement, the Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that the Company is complying with the terms of this Agreement. The Company shall retain such records for not less than six (6) years following their creation and for such additional period as DoITT may reasonably direct consistent with the goals of such record retention described in this Section 6.2. In order to support the City's ability to appropriately preserve, protect and otherwise manage the Inalienable Property, the Company shall on an annual basis provide DoITT with a report (in form and format reasonably acceptable to the Commissioner) describing any construction or installation of cable, wire, fiber optic telecommunications cable, or other closed-path transmission medium that may be used in lieu of cable, wire, fiber optic telecommunications cable, or other facilities and equipment within the Inalienable Property (phrases such as "within the Inalienable Property", "of the Inalienable Property", "manage the Inalienable Property" etc. as used in this Agreement will be deemed to refer to and include, in addition to the surface of the Inalienable Property, any space on, over and under the surface of the Inalienable Property, unless expressly stated otherwise) that has occurred during the previous twelve months, which report must include a map of such constructed or installed facilities that is consistent in form with the requirements of Section B.5. of Appendix A attached hereto. Each such report must include safety and compliance review and inspection documentation as required by law and as further reasonably required by DoITT. The Company must deliver the first such report no earlier than January 1 of the first full calendar year falling entirely within the Term and no later than the first anniversary of the Effective Date, with each successive report thereafter to be delivered annually between January 1 and the anniversary of the Effective Date. In order to

further advance the City's ability to appropriately preserve, protect and otherwise manage the Inalienable Property, the Company shall on an annual basis, provide DoITT with a report describing the Company's reasonably anticipated plans for the coming twelve months for any construction or installation of the System within the Inalienable Property. The first such report must be delivered no earlier than January 1 of the first full calendar year falling entirely within the Term and no later than the first anniversary of the Effective Date, with each successive report thereafter to be delivered annually between January 1 and the anniversary of the Effective Date. The Company shall further provide to the City, upon the City's request, and within a reasonable period under the circumstances, any additional information, material and/or reports that the City reasonably deems necessary to the City's efforts to preserve, protect and otherwise manage the Inalienable Property or to assure that the City is being and will be paid the compensation due from the Company under this Agreement.

6.3 Rules and Regulations. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue (in accordance with lawful procedures for such adoption or issuance) such rules, regulations, orders, or other directives that are not inconsistent with the terms of this Agreement and are reasonably necessary or appropriate in the lawful exercise of the City's authority as manager of the Inalienable Property and its police powers, and the Company agrees to comply with all such lawful rules, regulations, orders, or other directives.

6.4 Ownership Reports. In order to assist the City in determining whether the Company is capable of ongoing compliance with this Agreement, including, without limitation, ongoing payment of the amounts payable by the Company hereunder, the Company shall promptly report to the City any change in ownership of the Company which is inconsistent with the description of ownership set forth in Appendix D hereof or the most recently submitted previous such report.

6.5 Books and Records/Audit

6.5.1 Records. To the extent appropriate to assist the City in determining whether the Company is taking appropriate care of the Inalienable Property, complying with the terms of this Agreement, and paying the amounts payable by the Company hereunder, the Company shall throughout the Term maintain complete and accurate records of the operations of the Company with respect to the System in a manner that allows the City at all times to determine whether the Company is in compliance with this Agreement. All records required to be maintained hereunder must be retained for not less than six (6) years from the date of their creation.

6.5.2 Right of Inspection. To the extent appropriate to assist the City in determining whether the Company is taking appropriate care of the Inalienable Property, complying with the terms of this Agreement, and paying the amounts payable by the Company hereunder, the Commissioner and the Comptroller, or their designated representatives, will have the right to inspect, examine or audit during normal business hours and upon reasonable notice to the Company under the circumstances, all documents, records or other information which pertain to the Company or any Affiliate with respect to the System and its operation or the Company's performance under this Agreement. All such documents must be made available within New York City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit, provided, however, that if such documents are located outside

of the City, then, upon notice to the Company, the Company shall pay the reasonable expenses incurred by the Commissioner, the Comptroller or their designated representatives in traveling to such location. Access by the City to any of the documents covered by this Section 6.5.2 may not be denied by the Company on grounds that such documents are alleged by the Company to contain confidential, proprietary or privileged information, provided that this requirement will not be deemed to constitute a waiver of the Company's right to assert that confidential, proprietary or privileged information contained in such documents should not be disclosed by the City as described in Section 6.1 above.

SECTION 7 TRANSFERS AND ASSIGNMENTS

7.1 City Approval Required. The ownership and control structure of the Company as of the date of execution of this Agreement is set forth in Appendix D hereof. Subject to the provisions of this Article, each of the following shall be subject to the prior approval of the City: (i) any sale, assignment or transfer of the franchisee's interest in this Agreement, the System or the franchise granted hereunder, (ii) any transaction in which any change is proposed, which would result, directly or indirectly, in a change in the ownership of twenty percent (20%) or more of the voting interests or thirty-three percent (33%) or more of the non-voting interests of the ownership of the Company or the System assets or the franchise granted hereunder, and (iii) any other transaction in which a change in "Control" (as defined in Section 1.11 above) of the Company, the System or the franchise granted hereunder would occur; provided, however, that the foregoing requirements of this Section 7.1 will not be applicable with respect to (a) transfers of any ownership interests expressly permitted in the "Permitted Transfers" section, if any, of Appendix D, or (b) which are effectuated as a result of any transactions involving the exchange of publicly traded shares. To the fullest extent practical under the circumstances, application to the City for any approval required hereunder must be made at least one hundred twenty (120) calendar days prior to the contemplated effective date of the transaction. Such application must contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

- (a) any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;
- (b) a report detailing any changes in ownership of voting or non-voting interests of over five percent (5%);
- (c) other information necessary to provide an accurate understanding of the financial position of the Company and the System before and after the proposed transaction;
- (d) information regarding any potential impact of the transaction on rates and service of subscribers; and
- (e) any material contracts that relate to the proposed transaction as it affects the City and, upon reasonable request by the City, all material documents and other information related or referred to therein and which are necessary to understand the proposed transaction;

provided, however, that if the Company believes that the requested information is confidential and proprietary, then the Company must provide the following documentation to the City: (i) specific identification of the information; (ii) a statement attesting to the reason(s) the Company believes the information is confidential; and (iii) a statement that the documents are available at the Company's designated offices for inspection by the City.

7.2 City Action on Transfer. To the extent not prohibited by federal law, the City may, with respect to any transaction covered by Section 7.1: (i) grant; (ii) grant subject to conditions directly related to concerns relevant to such transaction; or (iii) deny its approval of the transaction.

7.3 Waiver of Transfer Application Requirements. To the extent consistent with federal law, the City may waive in writing any requirement that information be submitted as part of the transfer application covered by Section 7.1, without thereby waiving any rights the City may have to request such information after the application is filed.

7.4 Subsequent Approvals. The City's approval of a transaction described in Section 7.1 in one instance will not render unnecessary approval of any subsequent transaction.

7.5 Approval Does Not Constitute Waiver. Approval by the City of a transfer described in Section 7.1 will not constitute a waiver or release of any of the rights of the City under this Agreement, whether arising before or after the date of the transfer, except that upon full assumption of the terms of this Agreement by an approved transferee, the transferor shall be fully released from any obligations accruing after the date of such assumption.

7.6 No Consent Required For Transfers Securing Indebtedness. The Company will not be required to file an application or obtain the consent or approval of the City for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Company in the System, system assets or the Franchise granted hereunder in order to secure indebtedness. However, the Company will notify the City within ten (10) days if at any time there is a mortgage or security interest granted on the System, the Franchise granted hereunder or substantially all of the assets of the System. To the extent applicable, the submission of the Company's audited financial statements prepared for the Company's bondholders will constitute such notice.

7.7 Preliminary Determination Procedure. In the event that a change in direct or indirect ownership interest or interests in the Company, the System or the Franchise granted hereunder, is planned and the Company seeks the City's view of whether such transaction is one that would require the City's approval as described in Section 7.1 above, the Company may submit a written request to the Commissioner (in accordance with the notice requirements of Section 10.4 hereof) describing the proposed transaction and seeking a determination as to whether such approval is required and including any arguments the Company wishes to make that the consent of the City is not required. Upon review of such written request, the Commissioner will notify the Company in writing of the Commissioner's determination whether such approval by the City is required, provided that prior to such determination, if the Commissioner reasonably requests any information relevant to such determination, the Company shall provide such information.

SECTION 8 LIABILITY AND INSURANCE

8.1 Liability and Indemnification. The Company will be liable for, and the Company and each Affiliate (but not including any member of the Company or any owner of such member) will indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the “Indemnitees”) harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) (collectively “Liabilities” and each individually a “Liability”, and including, without limitation, damages or loss to any real or personal property of, or any injury to or death of, any Person or the City), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, upgrade, repair, removal or relocation of the System or otherwise arising out of or related to this Agreement; provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 8.1 will not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Further, it is a condition of this Agreement that the City assumes no liability for any Liability or Liabilities to either Persons or property on account of the same, except as expressly provided herein.

8.2 Limitation on Liability for Public Work, etc. None of the City, its officers, agents, servants, employees, attorneys, consultants or independent contractors will have any liability to the Company for any damage as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the System by or on behalf of the Company or the City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Inalienable Property, or the elimination, discontinuation, closing or demapping of any Inalienable Property. When reasonably possible, the Company will be consulted prior to any such activity and given the opportunity to perform such work itself, but the City will have no liability to the Company in the event it does not so consult the Company. All costs to repair or replace the System, or parts thereof, damaged or removed as a result of such activity, must be borne by the Company; provided, however, that the foregoing obligations of the Company pursuant to this Section 8.2 will not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

8.3 Limitation on Liability for Damages. None of the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors have any liability to the Company for any special, incidental, consequential, punitive, or other damages as a result of the lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 8.3 will not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

8.4 Defense of Claim, etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 8.1 hereof, then upon demand by the City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee’s name, by the attorneys for, or approved by, the Company’s insurance carrier (if such claim, action or proceeding is covered by insurance) or by the

Company's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Company shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

8.5 Liability for Damages to City Property. The Company shall reimburse, indemnify and hold harmless the City for any and all loss or damage to any municipal structure, Inalienable Property or other property of the City occurring during the course of any construction, operation, maintenance, upgrade, repair, relocation or removal of the System. This Section 8.5 will not apply to loss or damage which is the result of the gross negligence or willful misconduct of the City.

8.6 Insurance. The Company shall, on the Effective Date, have all insurance required by this Section 8.6 and the Company shall ensure continuous insurance coverage in the manner, form and limits required by this Section 8.6 throughout the Term and so long as the Company has facilities within the Inalienable Property.

8.6.1 Commercial General Liability Insurance. (a) The Company shall maintain Commercial General Liability insurance covering the Company as a named insured in the minimum amount of \$10,000,000 per occurrence and a minimum of \$10,000,000 aggregate. The use of an excess or umbrella policy is allowable to meet the limit. Such insurance shall protect the Company, 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 this Agreement. 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 policy shall include an endorsement providing that no cancellation or non-renewal of such policy will be effective without at least thirty (30) days prior written notice to the City delivered by either registered mail or other delivery method that provides proof of receipt.

(b) Such Commercial and 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.

8.6.2 Workers' Compensation, Disability Benefits and Employer's Liability Insurance. The Company shall maintain Workers' Compensation Insurance, Disability Benefits Insurance and Employer's Liability Insurance, in accordance with laws of the State of New York, on behalf of, or with regard to, all employees undertaking activities pursuant to or authorized by this Agreement.

8.6.3 Unemployment Insurance. To the extent required by law, the Company shall provide Unemployment Insurance for its employees.

8.6.4 Business Automobile Liability Insurance. (a) If vehicles are used in the provision of services under this Agreement, then the Company shall maintain Business Automobile Liability insurance in the amount of at least \$1,000,000 each accident combined

single limit for bodily injury and property damage and Excess or Umbrella Liability insurance to raise the aggregate coverage to a minimum of \$2,000,000 per accident for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles to be used in connection with this Agreement; and such coverage shall be at least as broad as the most recently issued ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, then the Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48), as well as proof of MCS-90.

8.6.5 General Requirements for Insurance Coverage and Policies

(a) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and that have an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the City’s Law Department;

(b) All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City;

(c) The Company shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy;

(d) There shall be no self-insurance program with regard to any insurance required under this Section 8.6, unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Section 8.6, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies; and

(e) The City’s limits of coverage for all types of insurance required under this Section 8.6 shall be the greater of (i) the minimum limits set forth in this Section 8.6.1, or (ii) the limits provided to the Company as a named insured under all primary, excess, and umbrella policies of that type of coverage.

8.6.6 Proof of Insurance.

(a) For Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance, the Company shall provide as a condition to the occurrence of the Effective Date one of the following (ACORD forms are not acceptable proof of workers’ compensation coverage):

C-105.2 Certificate of Workers’ Compensation Insurance;

U-26.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance;

Request for WC/DB Exemption (Form CE-200);

Equivalent or successor forms used by the New York State Workers’ Compensation Board; or

Other proof of such insurance in a form acceptable to the City;

(b) For each policy required under this Agreement, except for Workers’

Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Company shall, as a condition to the occurrence of the Effective Date, file a certificate of insurance with DoITT. All certificates of insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Company's general liability policy by which the City has been made an additional insured pursuant to Section 8.6.1 above. All certificates of insurance shall also be accompanied by either a duly executed "Certification by Broker" in the form attached as Appendix E or copies of all policies referenced in the certificate of insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted;

(c) Certificates of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section 8.6. Such certificates of insurance shall comply with the requirements of this Section 8.6 as applicable;

(d) The Company shall provide the City with a copy of any policy required under this Section 8.6 upon the demand for such policy by the Commissioner or the City's Law Department;

(e) Acceptance by the Commissioner of a certificate or a policy does not excuse the Company from maintaining policies consistent with all provisions of this Section or from any liability arising from its failure to do so; and

(f) In the event the Company receives any notice from an insurance company or other person that any insurance policy required under this Section shall expire or be cancelled or terminated for any reason, the Company shall immediately forward a copy of such notice to the City.

8.6.7 Miscellaneous Insurance Matters.

(a) Whenever any notice of any loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Section, the Company shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Company may not have coverage under such policy (for example, where one of the Company's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Company shall simultaneously send a copy of such notice to the "City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007". If the Company fails to comply with the requirements of this paragraph, then the Company shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City;

(b) The Company's failure to maintain any of the insurance required by this Section shall constitute a material breach of this Agreement. Such breach shall not be waived or

otherwise excused by any action or inaction by the City at any time;

(c) Insurance coverage in the minimum amounts required in this Section shall not relieve the Company of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable law;

(d) The Company waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Company in connection with this Agreement.

(e) the Company will be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and is authorized to provide service pursuant to this Agreement and the franchise granted hereunder only during the effective period of all required coverage (in the event authorization to provide service hereunder ceases by reason of the non-effectiveness of any such required insurance coverage, such authorization to provide service will be automatically restored, without any additional required action by any party, upon the effectiveness of all required insurance coverage being restored).

SECTION 9 BREACHES AND REMEDIES

9.1 Not Exclusive. The Company agrees that the City will have the specific rights and remedies set forth in this Section 9 to the fullest extent permitted by law. These rights and remedies are in addition to and cumulative of any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies will not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City, except as provided herein. The exercise of one or more rights or remedies by the City will not be deemed a waiver by the City of the right to exercise at the same time or thereafter any other right or remedy nor will any delay in, or omission of, the exercise of any remedy be construed to be a waiver by the City of or acquiescence to any default. The exercise of any such right or remedy by the City will not release the Company from its obligations or any liability under this Agreement, provided, however, that the City will in no case be entitled to duplicate recoveries from different sources.

9.2 Default.

9.2.1 Events of Default.

(a) Any of the following will constitute an Event of Default:

(i) any breach, not cured within fifteen (15) days after notice pursuant to Section 9.2.2 below, of a provision of this Agreement requiring the Company (x) to make any payment to the City when due, or (y) to maintain a liability insurance policy as set forth in Section 8.6, or

(z) to maintain, renew and/or replenish the Security Fund as required pursuant to this Agreement;
or

(ii) any other breach of this Agreement by the Company that is not cured within thirty (30) days (or such longer period as DoITT may deem appropriate in its discretion) after notice pursuant to Section 9.2.2 below (provided, however, that no Event of Default will exist pursuant to this clause (ii) if a breach is curable but work to be performed, acts to be done, or conditions to be removed cannot, by their nature, reasonably be performed, done or removed within the required thirty (30)-day cure period, so long as the Company has commenced curing the same within said thirty (30)-day cure period and shall diligently and continuously prosecute the same promptly to completion).

(b) Notice and cure periods provided in this Section 9.2.1, or elsewhere in this Agreement, during which a failure to make a payment to the City when due does not mature into an Event of Default shall not be construed as deferring the accrual of interest on the amount unpaid as set forth in Section 3.10 hereof, which interest shall accrue from the date was payment was due and not from the date (if any) the failure to make timely payment matured into an Event of Default.

9.2.2 Notice and Cure Procedures.

(a) The Commissioner will notify the Company, in writing, of any breach by the Company of an obligation under this Agreement, in accordance with Section 10.4 hereof. The notice will specify the alleged breach(es) with reasonable particularity. The Company shall either (i) if applicable, within the period of time specified in (as applicable) Section 9.2.1(a) hereof, or such longer period of time as the Commissioner may in his or her discretion specify in such notice, cure such alleged breach(es); or (ii) in a written response submitted to the Commissioner within fifteen (15) days after the notice of breach, present facts and arguments refuting that a breach has occurred. The submission of such a response, provided there is a bona fide, reasonable basis for such response, will toll the running of the applicable cure period provided for in Section 9.2.1(a) hereof, such tolling to be effective until the City responds in writing to such submission.

(b) If the Company fails to cure the breach within the applicable cure period and fails to submit a response to the Commissioner pursuant to Section 9.2.2(a) hereof within the period provided herein for submitting such response, an Event of Default will be deemed to have occurred.

(c) If, after the Company makes a response to the Commissioner pursuant to Section 9.2.2(a) hereof, the Commissioner determines, in his or her reasonable discretion, that a breach under this Agreement has occurred, the Company must cure such breach within the balance of the time period to cure that remained when the submission was made. If the Company fails to cure within the remaining time, the breach will be deemed to be an Event of Default, provided, however, that no Event of Default will exist if a breach for which a cure period is provided herein is curable, but work to be performed, acts to be done, or conditions to be removed cannot, by their nature, reasonably be performed, done or removed within the cure period remaining, so long as the Company has commenced curing the same within the cure

period provided and shall diligently and continuously prosecute the same promptly to completion. For purposes of this Section 9, “cure” includes not only the Company coming into compliance with this Agreement on a going-forward basis, but also compensating the City for any injury or damages it has suffered during the period of non-compliance directly as a result of such non-compliance, unless such non-compliance resulted from events beyond the Company’s reasonable control.

9.3 Remedies of the City.

(a) Subject to Section 9.3(b), upon an Event of Default (or upon any act or failure to act by the Company, or the occurrence of a set of circumstances relating to the Company or its activities, which under common law principles would constitute an anticipatory breach of this Agreement), DoITT may at its option take any one or more of the following actions: cause a withdrawal from the Security Fund; seek money damages (and if such damages are awarded collect such) from the Company as compensation for the breach of this Agreement; seek to restrain by injunction the Event of Default (or in the case of anticipatory breach the anticipated Event of Default); and/or invoke any other available remedy that would be permitted by law. DoITT will give the Company notice in writing when it determines to pursue one or more such remedies, but nothing herein will prevent DoITT from electing more than one remedy, simultaneously or consecutively, for any breach, provided, however, that the City will in no case be entitled to duplicate recoveries from different sources.

(b) DoITT shall have the right to terminate this Agreement prior to its scheduled expiration only in connection with an Event of Default which (i) remains uncured after the expiration of the applicable cure period provided for in Section 9.2.1 and (ii) constitutes a material breach of this Agreement that has deprived the City from receiving a significant portion of the rights or other entitlements, as expressly set forth in this Agreement, bargained for by the City (a “material and significant breach”), examples, without limitation, of a “material and significant breach” being (1) failure to maintain in effect the Security Fund as set forth in Section 5 hereof, (2) if the Company intentionally makes a material false or misleading statement or representation to the City relating to the documentation of Franchisee’s compliance with its obligations under this Agreement, (3) if the Company fails to maintain the insurance coverage required by or otherwise materially breaches Section 8 of this Agreement, (4) if the Company engages in a course of conduct intentionally designed to practice fraud or deceit upon the City, (5) if the Company intentionally engages or has intentionally engaged in any material misrepresentation with respect to any representation or warranty contained herein, and (6) any Event of Default which constitutes part of a persistent pattern of material failures by the Company to abide by one or more of its obligations under this Agreement, even if a single such failure might not by itself constitute a “material and significant breach”.

SECTION 10 MISCELLANEOUS

10.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in said Appendices, incorporated herein by reference and expressly made a part of this Agreement.

10.2 Entire Agreement. This Agreement, including all Appendices hereto, embodies the entire understanding and agreement of the City and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the City and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the City or the Company.

10.3 Delays and Failures Beyond Control of Company. Notwithstanding any other provision of this Agreement, the Company will not be liable for delay in the performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure where the Company has exercised all due care in the prevention thereof, or other causes or events, to the extent that such causes or events are beyond the control of the Company (provided that mere financial incapacity will not constitute a cause or event beyond the control of the Company for purposes of this Section 10.3). In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct said cause(s). The Company agrees that in correcting said cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall notify DoITT in writing of the occurrence of an event covered by this Section 10.3 within five (5) business days of the date upon which the Company learns or should have learned of its occurrence.

10.4 Notices. Every notice, order, petition, document, or other direction or communication to be served upon the City or the Company must be in writing and be sent by registered or certified mail, return receipt requested or by a recognized overnight delivery service such as Federal Express. Every such communication to the Company must be sent to its office located at 2187 Atlantic Street, Stamford, CT 06092, or to such other location in as the Company may designate by notice hereunder to the City from time to time. A copy of each communication covered by the immediately preceding sentence shall be sent to Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016, Attention: Kevin E. Fullington, Esq. Every communication from the Company must be sent to the individual, agency or department designated in the applicable Section of this Agreement, unless it is to "the City," or to "DoITT" in which case such communication must be sent to DoITT at 255 Greenwich Street, Ninth Floor, New York, New York 10007 Attention: General Counsel or to such other location in New York City as the City may designate by notice hereunder to the Company from time to time. A required copy of each communication from the Company must be sent to New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division, or to such other location in New York City as the City may designate by notice hereunder to the Company from time to time. Except as otherwise provided herein, the mailing of such notice, direction, or order is equivalent to direct personal notice and will be deemed to have been given when received.

10.5 General Representations, Warranties and Covenants.

(a) In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements will not be affected or waived by any inspection or examination made by or on behalf of the City), that, as of the Effective Date:

(i) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of New York. The Company has all requisite power and authority to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Company's organizational and governing documents, as amended to date, have been delivered to the Commissioner, and are complete and correct. The description of the ownership of the Company in Appendix D attached hereto is accurate and complete as of the Effective Date.

(ii) The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the Company has furnished the City with a certified copy of authorizations for the execution and delivery of this Agreement. This Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery by the Company and the City will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms (provided, however, that such warranty and covenant by the Company will not constitute a waiver of any right, claim or matter that is not waivable by the Company under federal law). The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(iii) No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, or in connection with any submission to the City in connection with the Company's request for the franchise granted hereunder or the preparation of this Agreement.

10.6 Additional Covenants.

10.6.1 In order to assure that the Inalienable Property and the use by the public thereof is adequately protected, the Company agrees that it will, prior to any construction, operation, maintenance, upgrade, repair or removal of the System in the Inalienable Property, secure all necessary permits, licenses and authorizations in connection with the construction, operation, maintenance, upgrade, repair or removal of the System, or any part thereof. The Company will not permit to occur, or will promptly take corrective action if any event does occur, that could result in the revocation or termination of any such permit, license or authorization or, after notice or lapse of time or both, would permit revocation or termination of any such permit, license or authorization.

10.6.2 In order to assure that the Company is able to comply with the lawful terms of this Agreement, the Company will (a) preserve and maintain its existence, its business, and all of its rights and privileges necessary or desirable in the normal operation of the System in the Inalienable Property and (b) maintain its good standing in its state of organization and continue to qualify to do business and remain in good standing in the State of New York.

10.6.3 All of the properties, assets and equipment used as part of the System will be maintained at a level of good repair, working order and good condition that is necessary to assure the safety and protection of the Inalienable Property and the safe and efficient use of said Inalienable Property.

10.7 Binding Effect. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement will apply to the Company, its successors, and assigns.

10.8 Rights Upon Termination.

(a) Upon the termination of this Agreement, whether at its scheduled expiration or otherwise, the Company shall at the City's election (i) remove the System located on, over or under the Inalienable Property at the Company's own cost and expense, pursuant to subsection (e) hereof, and/or (ii) sell to the City or to the City's designee the portions of the System within the Inalienable Property (subject to the continuing right of the Company, on terms to be negotiated between the City and the company each acting in good faith, to use the System to support operations outside New York City).

(b) The price to be paid to the Company upon an acquisition pursuant to the preceding subsection (a) will be the fair value of the System within the Inalienable Property, with no value allocable to the terminated or expired franchise itself, which price (as determined by the appraisal procedure as described hereafter in this subsection (b)) will be the fair value as that term is used in Section 363(h)(5) of the City Charter, as it may be amended, or under any successor provision. Subject to the limitations found in the next sentence, to the extent the City effects an acquisition pursuant to clause (ii) of Section 10.8(a) above herein and within one year thereafter sells that portion of the System acquired to a third party, and the amount received by the City from such sale exceeds the price paid by the City to the Company pursuant to this Section 10.8, the City will pay such excess amount to the Company after deducting all reasonable expenses incurred by the City in connection with such acquisition, interim operation and sale. The preceding sentence will apply only in cases where the Agreement has not terminated by reason of termination for breach or default of this Agreement by the Company. The date of valuation for purposes of setting the price referred to in the first sentence of this subsection (b) will be the date of termination of the Agreement. For the purpose of determining such valuation, the parties will select a mutually agreeable independent appraiser to compute the purchase price in accordance with industry practice and the aforementioned standards. If they cannot agree on an appraiser in ten (10) days, the parties will seek an appraiser from the American Arbitration Association. The parties will instruct the appraiser to make the appraisal as expeditiously as possible, but in no more than sixty (60) days and to submit to both parties a written appraisal. The Company will provide the appraiser with access to the Company's books

and records as necessary to make the appraisal. Notwithstanding anything to the contrary in this Agreement, the parties will share equally the costs and expenses of the appraiser.

(c) The City will notify the Company, within thirty (30) days after receipt of the appraisal described in the preceding subsection (b) of this Section 10.8, of its election pursuant to subsection (a) above of this Section 10.8. If it elects to make the purchase permitted under (a)(ii) above, the City will purchase the same at a closing to occur within a reasonable time (not to exceed twelve months) after its election. The Company agrees, at the request of the City, to continue to provide service to its then-existing customers to the extent required by any applicable FCC or PSC rules regarding termination or continuity of service and, to the extent not inconsistent with such rules, (i) to operate the System within the Inalienable Property pursuant to the provisions of this Agreement for a period of up to twelve (12) months after the termination of this Agreement, until the City either elects not to purchase any portion of the System within the Inalienable Property, or closes on such a purchase, or (ii) to cease all construction and operational activities affecting the portion of the System to be purchased in a prompt and workmanlike manner,.

(d) In the event of any acquisition by the City or the City's designee pursuant to this Section 10.8 hereof, the Company shall:

(i) cooperate with the City to effectuate an orderly transfer of all necessary or appropriate records and information concerning the assets to be transferred to the City;

(ii) promptly execute all appropriate documents to transfer to the City, subject to any liabilities, title to the assets being transferred as well as any lawfully assignable contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain and operate such assets, as appropriate; provided, that such transfers will be made subject to the rights, under Article 9 of the Uniform Commercial Code as in effect in the State of New York and, to the extent that any collateral consists of real property, under the New York Real Property Law, of banking or any other lending institutions which are secured creditors or mortgagees of the Company at the time of such transfers; and provided, that, with respect to such creditors or mortgagees, the City will have no obligation following said transfers to pay, pledge, or otherwise commit in any way any general or any other revenues or funds of the City, other than the gross operating revenues received by the City from its operation of the assets purchased, in order to repay any amounts outstanding on any debts secured by such assets which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the gross operating revenues received by the City from its operation of the such purchased assets, may in no event exceed the lesser of: (i) the fair market value of such assets on the date of the transfer of title to the City or (ii) the outstanding debt owed to such creditors and mortgagees on said date (nothing in this Section 10.8 may be construed to limit the rights of any such secured creditors to exercise its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments); and

(iii) promptly supply the City with all necessary records (i) to reflect the City's ownership of the System within the Inalienable Property; and (ii) to operate and maintain the System within the Inalienable Property including, without limitation, plant and equipment layout documents.

(e) In the event of an election by the City of the alternative set forth in clause (i) of subsection (a)(i) of this Section 10.8 upon any termination of this Agreement, the City may, but will not be obligated to, direct the Company to remove, at the Company's sole cost and expense, all, or any portion designated by the City, of the System from the Inalienable Property in accordance with all applicable requirements of the City and subject to the following:

(i) this provision will not apply to any portion of the System (whether buried or unburied) which, in the reasonable and informed judgment of the City, either (a) cannot be removed without undue adverse effect on the public or (b) would result in the Company incurring removal costs and expenses that are in excess of or otherwise disproportionate to any public benefit or use of the Inalienable Property reasonably expected by the City to be derived from the removal of such portion of the System;

(ii) in removing System facilities and equipment from the Inalienable Property the Company shall refill and compact, at its own cost and expense, any excavation that it makes and shall leave, in all material aspects, all Inalienable Property and other property in as good condition as that prevailing prior to the Company's removal of the System from the Inalienable Property and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments owned by the City or any Person other than the Company;

(iii) the City will have the right to inspect and approve the condition of such Inalienable Property after removal and, to the extent that the City reasonably determines that said Inalienable Property has not been left in materially as good condition as that prevailing prior to the Company's removal of the System therefrom, the Company will be liable to the City for the cost of restoring the Inalienable Property and other property to said condition;

(iv) the Security Fund, liability insurance and indemnity provisions of this Agreement will remain in full force and effect during the entire period of removal and associated repair of all affected Inalienable Property, and for not less than one hundred twenty (120) days after final completion thereof; and

(v) removal must be commenced within thirty (30) days of the removal order by the City and must be substantially completed within twelve (12) months thereafter including all reasonably associated repair of the Inalienable Property.

(f) If, in the reasonable judgment of the Commissioner, the Company fails to commence removal of the System from the Inalienable Property as designated by DoITT, within thirty (30) days after DoITT's removal order, or if the Company fails to substantially complete such removal, including all associated repair of the Inalienable Property, within twelve (12)

months thereafter, then, to the extent not inconsistent with applicable law, the City will have the right to either:

(i) remove all or part of the System located within the Inalienable Property at the Company's cost and expense, such removal to be performed by City personnel or, at the City's option, by another Person; or at the City's option

(ii) take ownership of any portion of the Company's System within the Inalienable Property designated by the City for removal and not timely removed by the Company, which portion will belong to and become the property of the City without payment to the Company (notwithstanding the provisions of subsections (a)(ii), (b), (c) and (d) of this Section 10.8) and the Company shall execute and deliver such documents, as the Commissioner requests, in form and substance acceptable to the Commissioner, to evidence such ownership by the City (although failure by the Company to execute and/or deliver such documents will not limit, compromise or affect the City's ownership of the applicable facilities).

(g) None of the decisions, directions or actions of the City pursuant to this Section 10.8 will constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

(h) Upon the later of the date one hundred and twenty (120) days after the termination of this Agreement for any reason or the date of the completion of removal of the System from and associated repair of the Inalienable Property pursuant to this Section 10.8 (or in the case of portions of the System that are, pursuant to a City decision under this Section 10.8, not being removed from the Inalienable Property, the date on which the Company delivers documentation confirming transfer of such portion of the System to the City), the Company will be entitled to the return of the Security Fund deposited pursuant to Section 5 hereof, or such portion thereof as remains on deposit with the City at said termination, provided that all offsets necessary (i) to reflect any withdrawals by the City from the Security Fund permitted pursuant to this Agreement, (ii) to cover any costs, loss or damage incurred by the City as a result of any Event of Default, and (iii) to reimburse the City for any and all costs and expenses incurred by the City related to removal of the System from the Inalienable Property pursuant to this Section 10.

(i) The City and the Company shall negotiate in good faith all other terms and conditions of any acquisition or transfer of the System located within the Inalienable Property, except that the Company hereby waives its rights (to the fullest extent such rights are lawfully waivable), if any, to relocation costs arising out of the termination of this Agreement pursuant to this Section 10.8 that may be provided by law and except that, in the event of any acquisition of the System within the Inalienable Property by the City: (i) the City will not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System acquired by it in any manner.

10.9 No Waiver; Cumulative Remedies. No failure on the part of the City to exercise, and no delay in exercising, any right hereunder may operate as a waiver thereof, nor will any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement will impair any of the rights of the City under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City at any one time will not affect the exercise of such right or remedy or any other right or other remedy by the City at any other time. In order for any waiver of the City to be effective, it must be in writing. The failure of the City to take any action regarding a breach or default of this Agreement or an Event of Default hereunder by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such breach, default or Event of Default which has not been cured, or with respect to any other breach, default or Event of Default by the Company.

10.10 Partial Invalidity. Except as expressly set forth otherwise in this Agreement, if any Section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid or unenforceable, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, then the party which had been the beneficiary of such invalidated portion will have the right (except as may be limited by law), at its option, to terminate this Agreement (as if the scheduled expiration of the Term had occurred pursuant to Section 2.1 hereof) and invoke the termination provisions hereof as set forth in Sections 2.3.2 and 10.8 hereof, except that if the other party waives such invalidity and continues to comply voluntarily with such invalidated portion then so long as such voluntary compliance continues the right to terminate described in this Section 10.10 shall not apply. To the extent this Section 10.10 is itself determined to be inconsistent with law, it shall be deemed to be narrowed in its scope to the extent necessary to render it lawful.

10.11 Headings. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and will not in any way affect the construction or interpretation hereof. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder,” and “hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The terms “shall” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

10.12 No Agency. The Company shall conduct any work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

10.13 Governing Law. This Agreement will be deemed to be executed in the City of New York and State of New York, and to be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, as applicable to contracts entered into and to be performed entirely within that State.

10.14 Survival of Representations and Warranties. All representations and warranties contained in this Agreement will survive the end of the Term.

10.15 Delegation of City Rights. The City reserves the right to delegate and redelegate, from time to time and to the extent permitted by law, any of its rights or obligations under this Agreement to any governmental body or organization, or official of any other governmental body or organization, and to revoke any such delegation or redelegation. Any such delegation or redelegation by the City will be effective upon written notice by the City to the Company of such delegation or redelegation. Upon receipt of such notice by the Company, the Company will be bound by all terms and conditions of the delegation or redelegation not in conflict with this Agreement. Any such delegation, revocation or redelegation, no matter how often made, will not be deemed an amendment to this Agreement or require the Company's consent.

10.16 Claims Under Agreement. The City and the Company agree and intend that, except to the extent such agreement would be impermissible under applicable law, any and all claims asserted by or against the City arising under this Agreement or related thereto will be heard and determined either in a court of the United States ("Federal Court") located in New York City or in a court of the State of New York ("New York State Court") located in the City and County of New York. To effect this agreement and intent, the Company agrees that:

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 10.18 hereof;

(b) With respect to any action between the City and the Company in New York State Court, the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court outside of the City of New York; and (iii) to move for a change of venue to a court of the State of New York outside New York County;

(c) With respect to any action between the City and the Company in Federal Court, the Company expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York; and

(d) If the Company commences any action against the City in a court located other than in the City and State of New York, then, upon request of the City, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City of New York. When the Company either gives such consent or dismisses such action, to allow for such reinstatement, the City agrees, where it is able, to waive any statute of limitation, provided the Company has brought such action at least three (3) months prior to the expiration of the statute of limitation and has provided the City with notice pursuant to this Agreement.

10.17 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this

Agreement may be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and approved as required by applicable law.

10.18 Service of Process. Process may be served on the Company either in person, wherever the Company may be found, or by registered mail addressed to the Company at its office in the City, or as set forth in Section 10.4 of this Agreement, or to such other location as the Company may provide to the City in writing, or to the Secretary of State of the State of New York.

10.19 Matching Provision. In the event that the City, after the date that this Agreement has been fully executed, enters into a binding, written franchise agreement granting a franchisee other than the Company authority to use the Inalienable Property to provide facilities and services in a manner comparable to that authorized hereunder, and such franchise agreement contains provisions imposing lesser obligations on the franchisee thereunder than are imposed by the provisions of this Agreement, then the Company may petition DoITT for a reduction in its obligations hereunder, which petition DoITT will not unreasonably delay or deny if DoITT, acting reasonably, determines

(i) that the reduction in obligations sought by the Company must be granted in order to ensure fair and equal treatment between the Company and the other franchisee, and

(ii) that the Company is in compliance with this its obligations under this Agreement, and

(iii) that the obligations imposed on the Company under this Agreement, taken as a whole, place the Company at a substantial competitive disadvantage in relation to the obligations imposed on the other franchisee, and

(iv) that the reason for the City's imposition of lesser obligations on the other franchisee are not the result of the differing nature of the City's legal authority with respect to such other franchisee or its activities, and

(v) that the City's imposition lesser obligations on the other franchisee are not justified by other benefits to the City or its citizens that are being received in connection with such other franchisee's services and are not being received in connection with the Company's services.

The City shall promptly provide the Company with a copy of each franchise agreement covered by this Section 10.19 which is not otherwise publicly available.

10.20 Further Assurances. Upon the written request of either party, the other party shall do, execute, acknowledge and deliver, at the cost and expenses of the requesting party, such further acts, deeds, conveyances and assurances as the requesting party may reasonably require in order to better assure, convey, grant, assign, transfer and confirm upon the requesting party the rights intended to be granted under this Agreement, provided that this paragraph is not intended to require any party to grant any additional substantive rights to the other party but only to provide such formal confirmation, as the requesting party may reasonably require, of the substantive rights granted hereunder .

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Execution Date.

THE CITY OF NEW YORK

By: _____
Deputy Mayor

By: _____
Department of Information Technology and
Telecommunications

Approved as to form and certified as to legal authority:

Acting Corporation Counsel

PHOENIX FIBER NETWORK, LLC

By: _____

City Clerk

State of New York)
)ss.:
County of _____)

On the __ day of _____, 2015, before me personally came [PRINCIPAL], to me known, who, being by me duly sworn, did depose and say that he is Managing Member of PHOENIX FIBER NETWORK, LLC, the entity described in and which executed the above instrument; and that he/she signed his/her name thereto in his/her capacity as Managing Member of PHOENIX FIBER NETWORK, LLC, authorized to thus execute said instrument.

Notary Public

State of New York)
)ss.:
County of New York)

On the __ day of _____, 2015, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she is Deputy Mayor of the City of New York, the entity described in and which executed the above instrument; and that he/she signed his/her name thereto in his/her capacity as Deputy Mayor of the City of New York authorized to thus execute said instrument.

Notary Public

State of New York)
)ss.:
County of New York)

On the __ day of _____, 2015, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she is _____ of the Department of Information Technology and Telecommunications of the City of New York, the entity described in and which executed the above instrument; and that he/she signed his/her name thereto in such capacity being authorized to thus execute said instrument on behalf of the City of New York.

Notary Public

APPENDIX A

CONSTRUCTION TERMS

A. Location of Cable

1. In order to assure efficient management and use of the City's public rights-of-way, the Company shall install all cables and other equipment located within the Inalienable Property in a manner consistent with existing telephone or public utility lines, which general requirement will include, without limitation, the following specific obligations:

(a) If and when the Company seeks to install cables and related equipment in an area of the City in which lines within the Inalienable Property are installed within the duct and conduit facilities of Empire City Subway Company, Ltd. (ECS) or Consolidated Edison Company of New York Inc. (CECONY), or their successors, the Company shall install its cables and related equipment that are to be located within the Inalienable Property within the duct and conduit facilities of ECS or CECONY (and if no space is available within the facilities of ECS or CECONY, the Company shall apply to either ECS or CECONY for construction of new facilities necessary to support the Company's installation). The selection of which entity to use, ECS or CECONY, will be at the Company's discretion wherever a choice is available. If the City's contractual arrangements with ECS and CECONY as they exist as of the Effective Date should change in a material manner or be replaced during the term of this franchise, the terms of this subsection (a) will be deemed adjusted to reflect such reasonable new arrangements regarding management and use of common duct and conduit facilities as may be adopted by the City.

(b) In any area of the City where existing landline communications cables within the Inalienable Property are located underground, the Company shall install its cable and related facilities underground, except as otherwise provided in this Agreement or as otherwise approved by the agencies of the City having jurisdiction over such matters (it is understood that among other conditions that an agency of the City may place on the granting of any such approval may be, to the fullest extent permitted by law, a requirement of additional compensation for use of the Inalienable Property in addition to and not in lieu of that contemplated in Section 3 of this Agreement, which Section 3 compensation is only intended to cover compensation for use of the Inalienable Property in a manner that does not require such additional approval).

2. Whenever possible, the Company shall, in order to minimize the burden on the public rights-of-way, install its cables and other equipment (not otherwise covered by Section 1(a) above of this Appendix) using existing telephone or utility (as that term is defined in 47 USC § 224 in effect as of the Effective Date) ducts, conduits, poles or similar facilities. If and when space for the Company to install its cables and related equipment using such existing ducts, conduits, poles or similar facilities cannot be obtained, the Company may install its own such facilities, provided that:

(a) The Company shall first obtain all necessary permits from the City's Department of Transportation and/or other applicable City agencies, including, without limitation, with respect to additional above ground poles or similar facilities, possible land use review pursuant to Department of City Planning requirements and possible requirement of additional compensation in a manner comparable to that referred to in the parenthetical in Section 1(b) above of this Appendix (in addition, prior to applying for any such permit, the Company must submit to DoITT for DoITT's approval, and receive DoITT's approval of, a plan indicating all anticipated requests for permits to be made pursuant to this provision, which plan may be updated from time to time by submission and approval of an updated plan);

(b) all above-ground facilities will be maintained in accordance with such maintenance standards applicable to such facilities as are or may hereafter be established by the City .

3. In the event of any inconsistency between this Appendix A and applicable provisions of the New York City Administrative Code or rules of the New York City Department of Transportation (the "Department of Transportation"), or other rules of the City, such provisions and rules will prevail.

4. Notwithstanding any provisions to the contrary set forth in this Appendix A or in this Agreement, the Company will be authorized pursuant to this Agreement to install, operate and/or maintain equipment pedestal boxes above ground on the surface of City sidewalks *only* if (a) the Company abides by the requirements of Attachment 1 attached to and made a part of this Appendix A and the Agreement and (b) such boxes are used to provide Cable Television Service pursuant to a Cable Television Franchise and/or to provide residential switched telephone service connecting to the public switched telephone network, and (c) such boxes are not located in those portions of the City in which Empire City Subway, Ltd. is required by contract with the City to construct and maintain conduits for communications lines.

B. Additional Construction Terms

1. The Company shall comply with all applicable federal, state and City laws, rules, codes, and other requirements, in connection with the construction, repair, upgrade and maintenance of the System within the Inalienable Property of the City, now or hereafter in effect, provided such are lawful and not preempted.

2. The installation of all cables, wires, or other component parts of the System in or on any structure within the Inalienable Property shall be undertaken in a manner which does not interfere with the operation or use of any existing conduit or preexisting system or facility of any third party.

3. The Company shall comply with, and shall ensure that its subcontractors comply with, all applicable lawful rules, regulations and standards of the Department of Transportation provided such are lawful and not preempted. If the construction, upgrade, repair, maintenance or operation of the System does not comply with such lawful, non-preempted rules, regulations and standards, the Company must, at its sole cost, remove and reinstall such cables,

wires or other component parts of the System to ensure compliance with such rules, regulations and standards.

4. The Company shall comply with requirements as may be adopted from time to time by the City regarding the periodic inspection by the Company of any of its facilities that are located within the Inalienable Property and which are on the surface of the ground or above ground, provided such requirements are reasonable for the purpose of assuring compliance with reasonable safety and esthetic standards for such facilities.

5. (a) The Company shall provide, in a format acceptable to the Commissioner, and to the extent (pursuant to subparagraph (c) below) different from the requirements set forth in subparagraph (b) below, consistent with industry standards, maps and other information detailing the location of the System installed in the streets of the City pursuant to this Agreement.

(b) As of the Effective Date, the following format is acceptable to the Commissioner:

(i) For any installation where the Company initiated a street cut and installed its own duct and cable, wire, fiber optic telecommunications cable or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable for the same purposes, all locations of such infrastructure elements must be produced utilizing the City's accurate physical base map (NYCMAP). Company shall also indicate what type of cable, wire, fiber optic telecommunications cable or other closed-path transmission medium that may be used in lieu of cable it is using in each location, including above and below ground locations and for both microtrenching and traditional trenching. The submission must be digital – provided on a CD, DVD or external hard drive and the infrastructure elements depicted must be accurate within two feet vertically and six inches horizontally, to match with the NYCMAP.

(ii) For any installation where the Company used the ducts of a third party, the Company shall use its best efforts to create maps using such specific source information, datapoints and detail as may have been made available to the Company upon the Company's request from the third party owning the underlying facilities where the System is installed.

(iii) The data, both graphical and attribute, must be formatted so that it can be easily read into a database. Line styles and symbols must conform to DoITT standards and all data must be structured according to DoITT specifications. Acceptable formats include, but are not limited to: ESRI shapefiles (preferred) and drawing interchange file.

(c) Upon written notice to the Company, the Commissioner may reasonably change the format requirements described in (b) above. Annually, simultaneously with the first payment due during each calendar year pursuant to Section 3.3.2, the Company shall submit to DoITT a certification representing that the most recently submitted mapping information submitted pursuant to this Section 5 of this Appendix A is accurate and current as a description of the System installed in the streets of the City pursuant to this Agreement and including a statement of the Company's calculation of its Installation Area as defined in Section 3.2.3 of this Agreement, such calculation to include a level of detail reasonably satisfactory to the City. Such

certification shall be signed by a licensed professional engineer, except that if the compensation due pursuant to Section 3.2 of this agreement with respect to any calendar year is less than the product of \$280,000 multiplied by the CPI Adjustment the annual certification to be made during the following calendar year may, at the option of the Company, be signed by the chief executive officer of the Company (or if there is no chief executive officer, the individual of equivalent responsibility in the Company) in lieu of a professional engineer. The Company shall submit to DoITT updates of the mapping information described in this Section 5 of this Appendix A promptly upon the completion of construction of each addition or change to the System which results in a change in the Installation Area as defined in Section 3.2.3 of this Agreement, which update shall include a calculation of the resulting changes in the Company's Installation Area and the dates such changes became effective, such calculation to include a level of detail reasonably satisfactory to the City

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ATTACHMENT 1 TO APPENDIX A

STANDARDS FOR ON-STREET TELECOMMUNICATIONS PEDESTAL STRUCTURES

1. APPLICABILITY

The standards described in this Attachment 1 shall apply, unless and until revised as described in Section 10 of this Attachment 1, to all “On-Street Pedestal Structures” (hereinafter referred to as “Pedestal Structures”), for which sidewalk opening permits are granted by the Department of Transportation (DOT) after November 13, 2000, defined as any communication utility box and related construction, such as foundations and bollards, which are located, in whole or in part, above grade and within the right-of-way of a public street, except when such box is located on a pole.

2. LOCATION STANDARDS

a. Clearance

- i. Corner Clearance Policy: Pedestal Structures shall comply with Executive Order #22 of April 13, 1995, plus an additional ten feet clearance; that is, there shall be a minimum distance of 20 feet between the “corner,” as defined in Executive Order #22 (attached) or any superseding Executive Orders, and any Pedestal Structure.
- ii. The edge of any Pedestal Structure nearest the curb shall be a minimum of 18 inches and a maximum of 24 inches from the curb.
- iii. A minimum clear path of 8 feet or one-half the width of the sidewalk width, whichever is less, shall be maintained. However, in no case shall the minimum clear path be less than 4 feet.
- iv. Minimum Distance between Pedestal Structures and Other Street Furniture: Varies depending on adjoining furniture; see attached Table 1.

b. Required Distance from other Pedestal Structures

- i. A minimum distance of 100 feet shall be maintained between any two Pedestal Structures, regardless of ownership, along any block-front; and
- ii. A maximum of three Pedestal Structures shall be permitted on any single block-front.

3. DIMENSIONAL STANDARDS

- a. **Height:** 2 feet-3 inches minimum and 4 feet maximum (excluding supporting base). The maximum height of any base structure, separate from the Pedestal Structure shall be 4 inches.
- b. **Length (dimension parallel to curb):** 6 feet maximum
- c. **Width (dimension perpendicular to curb):** 2 feet-4inches maximum
- d. **Area:**
 - i. Pedestal Structures greater than 3 feet in height shall have a maximum area as follows:
 - (1) 7 square feet if the width is less than or equal to 18 inches;
 - (2) 4.25 square feet if the width is greater than 18 inches
 - ii. Pedestal Structures less than or equal to 3 feet in height shall have a maximum area of 14 square feet.

4. GENERAL DESIGN STANDARDS

- a. All Pedestal Structures shall be constructed of steel or similar durable, vandal resistant materials.
- b. Materials shall have a low degree of light reflectivity.
- c. Pedestal Structures shall have no sharp edges or protuberances.
- d. Advertising Prohibited: No advertising shall appear on any Pedestal Structure.
- e. Identifying Information: Each Pedestal Structure shall have the following information permanently displayed on its surface.
 - i. Name of the telecommunications service provider; and
 - ii. The name, address and phone number of the telecommunications service provider contact for complaints regarding the pedestal Structure and a statement that the structure is subject to City jurisdiction and that complaints may be made by calling 311.

The required information shall be placed in an easily visible location facing the pedestrian pathway and appear in clearly legible letters a minimum of ½ inch in height. The logo of the telecommunications service provider may be included with the required information provided that the maximum coverage of all such information, including the logo, shall not exceed 48 square inches.

5. COMPANY MANAGEMENT STATEMENT

The following information shall be provided to the New York City Department of Information Technology and Telecommunications (DoITT) with respect to a proposed on-street Pedestal Structure:

- a. Description of potential off-street and pole-mounted locations and reason(s) for their rejection.
- b. The address and owner(s) name(s) where the telecommunications service provider has been refused off-street access to install equipment to be placed in the Pedestal Structure;
- c. Description of alternate on-street locations which are consistent with these standards and reason(s) for their rejection;
- d. When the telecommunications service provider is utilizing more than one size Pedestal Structure within the City, explanation of the technical and/or engineering requirements for proposal to install other than the smallest Pedestal Box in current use by the provider; and
- e. Where the proposed on-street location is determined to be unsatisfactory DoITT may require additional information as to the actions taken pursuant to sections (a), (b) and (c) above as well as to require consideration of additional off-street locations or the installation of a pole-mounted structure.

6. COMPANY ENGINEERING PLANS: SUBMISSION REQUIREMENTS

Concurrent with submission of the Company Management Statement, drawings showing the following information shall be provided to DoITT:

- a. Exact location and size of the proposed Pedestal Structure;
- b. Placement and distance of nearest Pedestal Structures;
- c. Placement and distance of other street furniture at and adjoining the proposed location;
- d. Number and location of homes served by the equipment to be installed in the proposed Pedestal Structure;
- e. List of the electronics to be placed in the Pedestal Structure; and
- f. A completed DOT permit form for sidewalk opening.

7. CITY AGENCY APPROVAL

- a. DoITT: documentary and on-site review.

- b. Landmarks Preservation Commission approval, as necessary for Pedestal Structures to be located in historic districts
- c. DOT (following DoITT sign-off): review and issuance of sidewalk opening permit.

8. MAINTENANCE

Pedestal Structures, including any supporting base, shall be maintained in accordance with the following:

- a. Any individual Pedestal Structure reported to a telecommunications service provider contact for complaints (identified pursuant to section 4(e)(ii) above) as having graffiti or stickers shall be cleaned within 5 working days;
- b. The telecommunications service provider shall establish a regular 30 day cleaning cycle, or such other schedule as may be acceptable to DoITT, to ensure that the Pedestal Structure is maintained in a clean condition, free of litter, rust, debris, stickers, graffiti and grime; and
- c. The quarterly preventive maintenance report to DoITT must include certification that all Pedestal Structures were cleaned in accordance with the regular cleaning cycle, as well as a log showing dates of receipt of complaints with regard to individual Pedestal Structures and date of response.

9. WAIVER

The Commissioner of DoITT may, in his or her sole discretion waive or modify these standards in specific cases when 1) compliance with the standards is impossible or impracticable, and precludes the petitioner from providing its standard telecommunications services and 2) when, in the Commissioner's sole opinion, the public health, safety and general welfare will not be endangered thereby. The petitioner shall request such waiver in writing and shall provide any information requested by DoITT, which may assist the Commissioner in his or her determination.

10. REVISION OF STANDARDS

The standards set forth in Sections 2, 3 and 4, and Table 1, of this Attachment 1 shall be subject to revision by the City's Department of City Planning ("DCP") as follows, and to the extent such standards are thus revised, the Company shall thereafter be subject to such revised standards as if they had been expressly set forth herein: DCP may adopt such revised standards provided such revised standards (i) reflect streetscape and urban design considerations, (ii) are arrived at after the Company is given 30 days notice and opportunity to comment in person and in writing and such comments, including any comments with respect to the cost of implementation, are duly considered, (iii) are consistent with the ability of the Company to provide the services authorized by the

Franchise Agreement of which this Attachment is a part, and (iv) do not limit the continued operation and maintenance of facilities installed pursuant to a franchise agreement, if any, previously executed by the City and the Company (“maintenance” as that term is used in this clause (iv) is understood to include, without limitation, replacement in kind of individual units as they are damaged or malfunction or otherwise reach the end of their useful life).

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TABLE 1:

Minimum Distances between Street Furniture (from DOT Revocable Consents)

Street Furniture	Minimum Clearance (feet)
Subway Entrance (open side)	15
Sidewalk Cafes	15
Newsstand	15
Bus Stop (with/without shelter)	15
Fire Hydrant/Standpipe	10
Driveway	10
Bicycle Rack (including bicycles)	8
Street Tree	5
Bench	5
Principal Building Entrance	5
Ramp intended to provide access for people with disabilities	5
Subway Entrance (closed end or side)	5
Public Telephone	5
Planters on the sidewalk not adjacent to the building façade	5
Mail Box	4
Street Lights	4
Parking Meters	4
Edge of Tree Pit	3
Street Signs	3
Utility Hole Covers, Cellar Doors, Areaways	3
Transformer Vault ¹ , Sidewalk Grates	3
All Other Legal Street Furniture	5

¹ This restriction does not apply to vaults owned by the Company or its affiliates.

APPENDIX B

IN-KIND COMPENSATION

The Company will provide the City, for the City's use, with ten percent (10%) of the capacity of the backbone of the Company's fiber optic network, but in no event more than six (6) fiber strands within such backbone. Franchisee also shall provide the City with additional capacity, equivalent to two (2) fiber strands in addition to the six (6) fiber strands, where the backbone consists of more than 80 strands of fiber. (The term "backbone" as used in this Appendix B will mean any portion of Franchisee's fiber optic network that contains twenty-four (24) or more fiber strands.

The fiber strands provided to the City in accordance with this Appendix B must be of the same type, quality and capacity standard as the other fiber strands installed. In the event of the use of a technology other than fiber optic strands, reasonably equivalent in-kind compensation will be provided to the City. The fiber strands provided to the City as in-kind compensation hereunder will be owned by the City and the City will hold title to such strands, which title must be free of encumbrance by actions of the Company. Upon termination of this Agreement, the City's title to such strands will remain in effect, except that if the City directs the removal of all or part of the Company's facilities from the Inalienable Property after termination under Section 10.8 of this Agreement, then the City's title to such strands will terminate upon the removal by the Company of those cables removed pursuant to such City direction. The Company shall, as part of its in-kind compensation to the City for use of the public right-of-way maintain and keep in good repair (or provide for the maintenance and good repair of) the fiber strands set aside for the City hereunder to the same standard as it applies to strands used by the Company's customers or by the Company to provide service to its customers. The parties agree that it is not the intention of this Exhibit B to require the Company to provide "drops" (i.e., electronics and internal wiring located within or serving particular buildings) to the City, although the Company acknowledges that as a necessary element of its obligation to make the capacity described above available to the City as described herein, the Company will provide at no charge reasonable access and assistance as needed to allow the City to connect the City's facilities and equipment to the fiber strands being provided.

Notwithstanding anything to the contrary in the preceding two paragraphs or this Agreement, to the extent that the Company is providing the in-kind compensation described in the first two paragraphs of Appendix B of the Telecommunications Services Franchise held by the Company, and the fiber capacity thus provided to the City is located within the facilities also being used to provide services under this Agreement, such provision of fiber capacity shall be a credit against the fiber capacity required hereunder.

APPENDIX C

STANDARD CITY CONTRACT PROVISIONS

The following standard City contract provisions are applicable to this Agreement and thus absent any state or federal law to the contrary shall be binding on the Company. However, to the extent it is determined by a court of competent jurisdiction and after all appeals have been exhausted that any one or more such provisions are beyond the City's authority to enforce or to require in the context of this Agreement, then each such provision that is the subject of such a determination shall be treated, as the case may be, as either unenforceable or as excised from this Agreement and not applicable hereunder. All the provisions set forth in this Appendix C are intended to be severable, and thus any such unenforceability or excision and nonapplicability as described in the preceding sentence shall (notwithstanding anything to the contrary stated within such provisions) not result in the termination of this Agreement generally or of any provisions of this Agreement that remain enforceable or that are not thus excised and rendered nonapplicable.

A. INVESTIGATIONS CLAUSE

1.1 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry 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 the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

1.2 (a) If 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 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 concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

1.2 (b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in a 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 concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

1.3 (a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license 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.

1.3 (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 any contract, lease, permit, or license pending the final determination pursuant to paragraph 1.5 below without the City incurring any penalty or damages for delay or otherwise.

1.4 The penalties which 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 for 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 any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have 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.

1.5 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 which may be relevant and appropriate:

- (a) The party's 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 a unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 1.4 above, provided that the party or entity has given actual notice to the commissioner or at the hearing called for in 1.3(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.

1.6 (a) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term “person” as used in this Section A. of Appendix C 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 receive 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.

1.7 In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or things of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

B. MACBRIDE PRINCIPLES PROVISIONS

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 workplace 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, or for construction involving an amount greater than fifteen thousand dollars, 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 and any individual or legal entity in

which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination 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 the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five 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 of the City Council 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 functions 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 a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent 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 their compliance with such principles.

PART B

For purposes of this section, the following term shall have the following meaning:

“MacBride Principles” shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require 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 workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;

- (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 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, unless otherwise expressly set forth herein. 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 its 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 this 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 and remedies the entity has pursuant to this contract or by operation of law.

C. EMPLOYMENT AND PURCHASING

1. Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by a majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, and hours of employment or any other terms, conditions or

privileges of employment. The Company shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

2. Local Preference. The Company shall, at its own cost and expense, develop and maintain a plan for the recruitment, education, training and employment of residents of the City, for the opportunities to be created by the construction, operation, marketing and maintenance of the System within the Inalienable Property. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. Such plan shall be designed so as to ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company. Such plan shall be updated from time to time as the City deems reasonably necessary. The Company shall, throughout the Term, implement such plan, at its own cost and expense, by ensuring, to the maximum feasible extent, the recruitment, education, training, and employment of City residents.

3. City Vendors. To the maximum feasible extent, after taking into account price and quality considerations, the Company shall utilize vendors located in the City in connection with the construction, operation, marketing and maintenance of the System. The Company shall, after taking into account price and quality considerations, in the purchase of comparable materials, equipment, services or supplies of any nature, give effect to a preference for such items which are assembled, manufactured, or otherwise produced, in whole or in part, within the City.

4. Equal Employment Opportunity. The Company agrees to comply with the provisions of Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10 Sections 1-14 of the Rules of the City of New York) and City Administrative Code 6-108 and all rules and regulations promulgated thereunder (collectively, the "EEO Requirements"), as such EEO Requirements may be amended, modified or superseded throughout the Term. Notwithstanding that the EEO Requirements may not apply on their face to the Company based solely on its status as a party to this Agreement, the Company shall comply in all respects with the provisions of such EEO Requirements and successor and replacement laws, orders and regulations adopted following the Effective Date. As required by said Executive Order No. 50, the provisions of Sections 50.30 and 50.31 of the Final Rule implementing said Order are incorporated herein by this reference. The Company agrees to make a reasonable inquiry and to engage in reasonable compliance monitoring efforts with all unions to ensure that all contractors and subcontractors comply with the required contractual language in Paragraph 5 of this Section C. of this Appendix C. The Company shall not contract with and shall discontinue any contract entered into after the Effective Date with any union, contractor or subcontractor that refuses to agree to or fails to comply with the contractual language in said Section 5.

5. Enforcement. The Company shall take steps to ensure that the requirements of the preceding Paragraph 4 are adhered to by each union with which the Company deals, each officer, employee, agent, contractor or subcontractor of the Company, and each Person performing work pursuant to this Agreement with respect to the System for, on behalf of, or at the discretion of, the Company. The requirements of said Paragraph 4 hereof shall apply to every contract relating to the System between the Company and: (i) any union; (ii) any contractor; (iii) any subcontractor; or (iv) any Person with which any of the foregoing Persons has a relationship in connection with any aspect of the System. To comply with the obligations of said Paragraph 4 and this Paragraph 5, the Company shall include, in all contracts described in the foregoing

sentence which are entered into following the Effective Date (which shall include any renewals, amendments and modifications of existing contracts), the following language, stating that such party: “has received a copy of Section C of Appendix B of a certain agreement by and between the City of New York and the Company dated as of [insert Effective Date] pursuant to which the Company agreed to comply with each term, condition and requirement of said Section C, which terms, conditions and requirements are deemed to be incorporated herein by this reference.”

D. ADDITIONAL COVENANTS

Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, the Company agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing:

The Company shall comply with: (a) all laws, rules, regulations, orders, writs, decrees and judgments applicable to the System within the Inalienable Property (including, but not limited to, those of the PSC and the FCC and any other federal or state agency or authority of competent jurisdiction); and (b) all local laws and all rules, regulations, orders, or other directives of the City, DoITT, and the Commissioner related to management of the Inalienable Property to the extent lawful and nor preempted.

The Company agrees to comply in all respects with the City’s Vendor Information Exchange System, as the same may be amended from time to time.

APPENDIX D

COMPANY CONTROL AS OF THE EFFECTIVE DATE AND PERMITTED TRANSFERS

Full list of 10% or more direct or indirect interests in the franchise assets as of the Effective Date (hereinafter, the “Approved Interest Holders”):

Michael Collado
Clifford Kane
Michael Dubilier
Paul Pariser
Tempe Holdings LLC
Light Blue LLC
Erleichda Endeavors LLC

Permitted Transfers

1. Any transaction the result of which is that both (1) Control of the Company, the System and the franchise granted hereunder is exercised by one or more of the Approved Interest Holders listed above and (2) no Person other than an Approved Interest Holder holds an interest which gives it Control of the Company, the System or the franchise granted hereunder.
2. Any transfer, directly or indirectly, by any individual Approved Interest Holder of all or any portion of his or her direct or indirect equity interest in the Company, the System and the franchise granted hereunder, outright or in trust, to or for the benefit of the spouse, a sibling, parent or any lineal descendant of such individual Approved Interest Holder or a lineal descendant of a sibling of such individual Approved Interest Holder (each, a “Relative”) or any personal representative, estate or executor under any will of such individual Approved Interest Holder or pursuant to the laws of intestate succession, so long as the final recipient from any personal representative, estate or executor under any will or pursuant to the laws of intestate succession is a Relative of such individual Approved Interest Holder.
3. Any transaction (an “intra-corporate transaction”) in which an interest of one or more entity or entities which is an Approved Interest Holder is transferred to an entity which wholly owns, directly or indirectly, such Approved Interest Holder(s), or an entity which is, directly or indirectly, wholly owned by such Approved Interest Holder(s), or an entity which is, directly or indirectly, under wholly common ownership with such Approved Interest Holder(s).

APPENDIX E

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance, dated _____, is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized official or broker]

[Name and title of authorized official (typewritten)]

Sworn to before me this
____ day of _____, 2015

NOTARY PUBLIC

FRANCHISE AGREEMENT

Between

THE CITY OF NEW YORK

And

PHOENIX FIBER NETWORK, LLC

Telecommunications Services Franchise

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DRAFT

THIS AGREEMENT, dated as of the ____ day of ____, 2015 (the “Execution Date”), is by and between THE CITY OF NEW YORK (as defined in Section 1 hereof, the “City”) and PHOENIX FIBER NETWORK, LLC, a Delaware limited liability company whose principal place of business is located at 2187 Atlantic Street, Stamford, CT 06092 (as defined in Section 1 hereof, the “Company”), (each, a “party” and collectively, the “parties”).

WITNESSETH:

WHEREAS, the New York City Department of Information Technology and Telecommunications (as defined in Section 1 hereof, “DoITT”), on behalf of the City, has the authority to grant franchises (“Franchises”) involving the occupation or use of the Inalienable Property (as defined in Section 1 hereof) of the City in connection with the provision of Telecommunications Services (as defined in Section 1 hereof); and

WHEREAS, the Company has submitted to DoITT its proposal to obtain a Franchise in response to a solicitation issued by DoITT pursuant to Resolution Number 1909 (adopted by the New York City Council on August 22, 2013); and

WHEREAS, on [●], 2015 the New York City Franchise and Concession Review Committee (as defined in Section 1 hereof, the “FCRC”) held a public hearing on a proposed Franchise to install, operate and maintain cable, wire, fiber optic telecommunications cable (or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable for the same purposes) and related equipment and facilities within the City’s Inalienable Property to be used in providing Telecommunications Services, which hearing was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the City Charter; and

WHEREAS, DoITT has with respect to the proposed Franchise complied with the New York State Environmental Quality Act (“SEQRA”) (Section 8-010 et. seq.) of the New York State Environmental Conservation Law), the SEQRA regulations set forth at Part 617 of Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York); and

WHEREAS, the New York City Department of City Planning determined that the proposed Franchise would not have land use impacts or implications and that therefore the proposed Franchise is not subject to the Uniform Land Use Review Procedure set forth in Section 197-c of the New York City Charter;

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the parties hereby covenant and agree as follows:

SECTION 1 DEFINED TERMS

For purposes of this Agreement, the following terms, phrases, words, and their derivatives will have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

1.1 “Affiliate” means each Person who directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, the Company.

1.2 “Agreement” means this agreement, together with the Appendices attached hereto and all amendments, modifications or renewals hereof or thereof.

1.3 “Block” has the meaning set forth therefor in Section 3.2 hereof.

1.4 “Block Linear Feet” has the meaning set forth therefor in Section 3.2 hereof.

1.5 “Cable Television Service” means “cable service” as that term is defined, as of the Effective Date, in 47 USC Section 522 (6).

1.6 “Cable Television Franchise” means a franchise granted by the City expressly authorizing the use of the Inalienable Property for the provision of Cable Television Service to Residents.

1.7 “City” means the City of New York or, as appropriate in the case of specific provisions of this Agreement, any board, bureau, authority, agency, commission, department or any other entity of the City of New York, or any authorized officer, official, employee or agent thereof, or any successor thereto.

1.8 “Commissioner” means the Commissioner of DoITT, or his or her designee, or any successor in function to the Commissioner.

1.9 “Company” means Phoenix Fiber Network, LLC, a limited liability company organized and existing under the laws of the state of Delaware and authorized to do business in the State of New York, whose principal place of business is located at 2187 Atlantic Street, Stamford, CT 06092, or a successor entity thereto permitted as provided in Section 7 hereof.

1.10 “Comptroller” means the Comptroller of the City, the Comptroller’s designee, or any successor in function to the Comptroller.

1.11 “Control” of an entity, business or asset means the power (de facto or de jure) to direct or cause the direction of the management and policies of or related to such entity, business or asset, whether such power is exercisable directly or through intermediate entities.

1.12 “CPI Adjustment” applied to a dollar amount for purposes of calculating a payment means an adjustment in which said dollar amount is multiplied by a fraction, the numerator of which is the Consumer Price Index (All Urban Consumers, All Items, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA, 1982-84=100) announced by the U.S. Department of Labor for the month prior to the month in which said payment is to be made and the denominator of

which is the same index announced by the U.S. Department of Labor for the month in which the Effective Date occurred. If the U.S. government no longer announces an index as described in the preceding sentence, the City will select an alternative index that is expected to be as comparable as practicable in its effect as the index described in the preceding sentence would have been.

1.13 “Credit Support” means a letter of credit, security deposit, or comparable form of equivalent financial assurance.

1.14 “DoITT” means the Department of Information Technology and Telecommunications of the City of New York, or any successor thereto.

1.15 “Effective Date” means the date stated in a notice issued by the City to the Company, which date will be ten (10) days after the first date on which all of the following conditions have been met: (a) this Agreement has been registered with the Comptroller as provided in Sections 375 and 93.p. of the City Charter, (b) all documents have been submitted as required by Section 2.2 hereof, (c) the City’s Vendex review process (if lawfully applicable to franchises of the type covered by this Agreement) with respect to the Company has been completed without disqualifying information having arisen, (d) the Initial Payment described in Section 3.3 hereof has been paid to the City, (e) the Credit Support has been arranged by the Company and is available to the City in accordance with the terms and conditions of this Agreement and (f) payment has been made of an amount sufficient to pay, or reimburse the City for, all costs incurred in publishing the legally required notice(s) with respect to the FCRC’s hearing regarding the Franchise granted by this Agreement.

1.16 “FCC” means the Federal Communications Commission, or any successor thereto.

1.17 “FCRC” means the Franchise and Concession Review Committee of the City of New York, or any successor thereto.

1.18 “Franchise Area” means the City of New York.

1.19 “Inalienable Property” means that property of the City which is inalienable pursuant to Section 383 of the New York City Charter or a successor provision thereto. References to the Inalienable Property in this Agreement will be deemed to include the space on, over and under the surface of the Inalienable Property (except that where the City’s property rights to such Inalienable Property is expressly limited in a particular case to specified dimensional boundaries then such references shall be limited, in regard to such particular property, as thus expressly limited).

1.20 “Indemnities” has the meaning set forth therefor in Section 8.1 hereof.

1.21 “Information Services” has the meaning set forth therefor in 47 USC Section 153 (24) as of the Effective Date.

1.22 “Initial Payment” means the payment due as provided in Section 3.3.1 hereof.

1.23 “Installation Area” has the meaning set forth therefor in Section 3.2.3 hereof.

1.24 “Mayor” means the chief executive officer of the City, the designee thereof, or any successor to the executive powers thereof.

1.25 “New Franchisee” means an entity that is not, as of the Effective Date, operating under the Franchise granted by this Agreement any facilities which have been installed in the Inalienable Property prior to the Effective Date either pursuant to a previous or other franchise from the City or otherwise.

1.26 “Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

1.27 “Phased Adjustment” has the meaning set forth therefor in Section 3.2.4 hereof.

1.28 “Pre-Credit Amount” has the meaning set forth therefor in Section 3.2 hereof.

1.29 “PSC” means the New York State Public Service Commission or any successor thereto.

1.30 “Resident” means an occupant who: (i) resides in a dwelling which has or is entitled to receive from the City a residential certificate of occupancy, including, without limitation, a private dwelling, class A multiple dwelling, or an interim multiple dwelling or (ii) has continuously resided in the same buildings as a permanent resident and who takes occupancy pursuant to a lease (or other similar arrangement) of at least six (6) months duration. For purposes of this Agreement, the terms “private dwelling,” “class A multiple dwelling,” and “interim multiple dwelling” shall have the same meaning as they may have in the New York State Multiple Dwelling Law, as such law may from time to time be amended.

1.31 “Security Fund” has the meaning set forth therefor in Section 5.1 hereof.

1.32 “Service” or “Telecommunications Service” means “telecommunications service” as that term is defined, as of the Effective Date, in 47 USC Section 153(53).

1.33 “Stub Adjustment” has the meaning set forth therefor in Section 3.2.2(b) hereof.

1.34 “System” means the cable, wire, fiber optic telecommunications cable (or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable for the same purposes), and related equipment and facilities, within the Inalienable Property, used by the Company to provide the Telecommunications Services.

1.35 “Telecommunications Service” means “telecommunications service” as that term is defined, as of the Effective Date, in 47 USC Section 153 (53).

1.36 “Information Service Franchise” means a franchise granted by the City expressly authorizing the use of the Inalienable Property for the provision of Information Service.

1.37 “Term” has the meaning set forth therefor in Section 2.1 hereof.

SECTION 2 GRANT OF AUTHORITY

2.1 Term. This Agreement and the franchise granted hereunder, will commence upon the Effective Date, and will continue until and including June 30, 2021, unless earlier terminated as described herein. The period of time that this Agreement remains in effect is herein referred to as the “Term.”

2.2 Conditions to Effectiveness.

2.2.1 Certain Actions by the Company Before Effective Date. As provided in Section 1.14 above, the occurrence of the Effective Date is conditional on, among other things, the submission to the City by the Company of certain documents as described in this Section 2.2. Said documents are (a) evidence as described in Section 8.6.1 below of the Company’s liability insurance coverage pursuant to Section 8 hereof; (b) an opinion of the Company’s counsel dated as of the date this Agreement is executed by the Company, in form reasonably satisfactory to the City, (c) an affirmation signed by an authorized officer or representative of the Company in the form set forth in the solicitation issued by DoITT seeking a proposal from the Company for the Franchise granted hereunder; (d) an IRS W-9 form certifying the Company’s tax identification number; (e) organizational and authorizing documents as described in Sections 10.5.1 and 10.5.2 hereof; (f) documentation verifying that the Company has completed all required submissions under the City’s VENDEX process, and the City’s review thereof has been completed; and (g) documentation verifying that the City’s review of the Company’s submissions pursuant to Local Law 34 of 2007 has been completed and the City has found that the Company is in compliance with the requirements of said Local Law 34. The City will issue a notice to the Company setting forth the Effective Date, such notice to be issued within ten (10) days of the first date on which all required conditions to occurrence of the Effective Date, as set forth in this Section 2.2 and in Section 1.15 above, have been met.

2.3 Nature of Franchise, Effect of Termination and Renewal.

2.3.1 Nature of Franchise. The City hereby grants the Company, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the Company with the right and the City’s consent to install, operate, repair, maintain, remove and replace the System (authorization to install non-closed path transmission facilities, such as antennae and similar equipment which transmits or receives information wirelessly, within the Inalienable Property is not granted pursuant to this Agreement, although the Company is permitted to separately seek a franchise granting such authorization). The Franchise granted hereunder does not include the right or consent to install, maintain or operate any computer kiosks or other similar facilities within the Inalienable Property of the City the purpose of which is the reception and use of Telecommunications Services, or any other service, by pedestrians, vehicles or other users or occupants of the Inalienable Property, although the Company is permitted to separately seek authority from the City granting such authorization. The Franchise granted hereunder does not include the right or consent to use the Inalienable Property of the City for the transmission of Cable Television Service or Information Service, unless such authority is expressly granted hereinafter, although to the extent not thus expressly granted hereinafter, the Company is permitted to separately seek authority from the City granting such authorization.

2.3.2 Effect of Termination. Upon termination of this Agreement, the Franchise granted hereunder will expire; all rights of the Company in such Franchise will cease, with no value

allocable to such Franchise; and the rights of the City and the Company to the System, or any part thereof, will be determined as provided in Section 10.8 hereof. The termination of this Agreement and the Franchise granted hereunder may not, for any reason, operate as a waiver or release of any obligation of the Company or any other Person, as applicable, for any liability (i) pursuant to Section 8.1 hereof, which arose or arises out of any act or failure to act required hereunder prior to the termination; (ii) which exists pursuant to Sections 3 (“Compensation”), 6.5.2 (“Right of Inspection”), 10.8 (“Rights Upon Termination”), 10.13 (“Governing Law”) and 10.16 (“Claims Under Agreement”) hereof; and (iii) to maintain in full force and effect the Security Fund described in Section 5 hereof and the coverage under the liability insurance policies required under and in accordance with Section 8 hereof.

2.3.3 Renewal Option. (a) For purposes of this Section 2.3.3, the following terms shall be defined as follows: A “Recent Franchise Agreement” shall mean any written franchise agreement entered into by the City and authorizing a franchisee to use the Inalienable Property for purposes comparable to those described in Section 2.3.1 provided that the date on which such agreement first became effective is between July 1, 2019 and the date the Company chooses to exercise the option which is described in this Section 2.3.3 below. A “Recent Franchisee” is a franchisee under a Recent Franchise Agreement. If there are no Recent Franchise Agreements in existence as of January 1, 2021, then the period during which a franchise agreement falls within the definition of a Recent Franchise Agreement shall be deemed to extend back in time an additional one year (to July 1, 2018), and if that still does not result in at least one Recent Franchise Agreement, then that time period shall further extend back in additional one-year increments until at least one franchise agreement falls within the definition of a Recent Franchise Agreement. A franchise agreement may be considered a Recent Franchise Agreement even if it is entered into with a franchisee that held a previous franchise from the City and even if the facilities in the Inalienable Property authorized thereby were previously authorized under a previous franchise from the City.

(b) During the period beginning October 1, 2020 and ending April 1, 2021, the Company shall (provided it is not then in default of any of its material obligations under this Agreement) have the option to extend the scheduled end date of the Term from June 30, 2021 to the fifteenth (15th) anniversary of the Effective Date (along with a comparable extension of the term of the Company’s Information Service Franchise as described therein), provided that if the Company exercises such option, then beginning July 1, 2021, the terms and conditions of this Agreement shall, at the City’s option, be deemed to be revised to match those of that Recent Franchise Agreement the Recent Franchisee under which most closely most matches the Company, based on the standards set forth in clauses (i) through (viii) below of this subsection (b). Failure to exercise such option by the Company shall not bar the Company and the City (each acting with the fullest amount of discretion authorized by applicable law) from reaching a mutual agreement to authorize the Company to continue to use the City’s rights of way for the provision of Telecommunications Services after July 1, 2021 upon terms and conditions agreed to by the City and the Company.

The standards to be applied in determining which Recent Franchisee most closely matches the Company shall be as follows:

(i) the degree to which the purposes described in Section 2.3.1, or provision of comparable effect, in the Recent Franchisee's Recent Franchise Agreement matches the purposes described in Section 2.3.1 hereof;

(ii) the length of time the Recent Franchisee, or its affiliates or predecessors in interest, have had to amortize its or their investment in the facilities installed in the Inalienable Property pursuant to franchise rights granted by the City;

(iii) the size of the Recent Franchisee, measured on an invested-capital basis;

(iv) the extent of the installation by the Recent Franchisee in the Inalienable Property of cable, wire, fiber optic telecommunications cable or other closed-path transmission medium as part of its Telecommunications Services system;

(v) the types and forms of Telecommunications Services being generally offered by the Recent Franchisee and the type of ultimate end-user customer base and mix of customers for such services;

(vi) the percentage of the Recent Franchisee's Telecommunications Services provided on a wholesale basis to third-party providers of retail services;

(vii) the degree to which the provision of Telecommunications Services constitutes the primary business activity of the Recent Franchisee; and

(viii) the degree to which there are material extrinsic circumstances (e.g., governmental grant, subsidy or other assistance, or tax exemption) existing in favor of the Recent Franchisee.

If the Company and the City cannot agree which Recent Franchisee most closely matches the Company, then an arbitrator shall make such determination, such arbitrator to be selected by the City with the approval of the Company not to be unreasonably withheld, which arbitrator shall make such determination following procedures of the American Arbitration Association.

2.3.4 Other Renewal. Except as expressly set forth in the preceding Section 2.3.3, this Agreement does not grant to the Company any right to renewal of this Agreement or the franchise granted hereunder. At the end of the Term, the City will have the discretion to renew this Agreement, or not, subject only to such limitations on such discretion as may exist under applicable state and/or federal law.

2.4 Conditions and Limitations on Franchise.

2.4.1 Not Exclusive. Nothing in this Agreement affects the right of the City to grant to any Person a franchise, consent or right to occupy and use Inalienable Property, or any part thereof, for the construction, operation and/or maintenance of a system in order to provide Telecommunications Services in the City for any purpose, or the right of the City (i) to construct, operate and/or maintain a system to provide Telecommunications Services in the City or (ii) to acquire, in accordance with Section 10.08 below, and operate the System.

2.4.2 Construction of System.

(a) The Company shall use commercially reasonable efforts to coordinate (and in any event comply with all legal requirements, if any, to so coordinate) its construction schedule with the appropriate City agencies, including, without limitation, the Department of Transportation, the appropriate Borough Engineer and the Office of Construction, to minimize unnecessary disruption.

(b) The Company shall obtain all construction, building, street opening or other permits or approvals necessary before installing the System. The Company shall provide copies of any such permits and approvals to DoITT promptly following receipt of a request therefor.

(c) Construction within the Inalienable Property which falls within the boundaries of New York City park land will be subject to the approval of the City's Department of Parks and Recreation (or successor agency), acting with the fullest discretion permitted by law, and such discretion is a limit on the scope of the Franchise covered hereby. Construction within the Inalienable Property which falls within the boundaries of New York City waterfront or wharf property as defined in Section 1150 of the New York City Charter will be subject to the approval of the City's Department of Transportation or Department of Small Business Services, whichever has jurisdiction over the particular property under City law, or the appropriate successor agency, acting with the fullest discretion permitted by law, and such discretion is a limit on the scope of the Franchise covered hereby. To the extent that such construction activity within park, wharf or waterfront property would temporarily materially interfere with the use of such property for park, wharf or waterfront use, as the case may be, the responsible agency may require reasonable compensation to the City for such interference (in addition to, and not in lieu of, the reasonable compensation for use of the Inalienable Property generally under this Agreement as set forth in Section 3 hereof) to the fullest extent permitted by law.

SECTION 3 COMPENSATION

3.1 Compensation. The Company agrees to provide reasonable compensation to the City, in return for the benefit conferred by the City of the Franchise to use the Inalienable Property for the purpose of offering and providing Telecommunications Services, to be as described in this Section 3.

3.2 Monetary Compensation.

3.2.1 As a Franchise fee to be paid as compensation in exchange for the benefit and privilege of using the Inalienable Property for the purpose of offering and providing

Telecommunications Services, the Company shall pay to the City the following amount per calendar quarter or portion thereof:

(a) the excess, if any, of the applicable Pre-Credit Amount (as calculated pursuant to Sections 3.2.2(a) and 3.2.2(b) hereof), over the sum of (x) any amounts paid by the Company to the City, with respect to the facilities over which Telecommunications Services are being offered to the public pursuant to this Agreement, as franchise compensation under any Cable Television Franchise held by the Company which compensation is attributable to the same calendar quarter or portion thereof, plus (y) any amounts paid by the Company to the City, with respect to the facilities over which Telecommunications Services are being offered to the public pursuant to this Agreement, as franchise compensation under any Information Services Franchise held by the Company which compensation is attributable to the same calendar quarter or portion thereof, but

(b) in no event less than the product of \$70,000 multiplied by the CPI Adjustment (except that if the Company is a New Franchisee said \$70,000 figure shall be reduced to \$5,000 until but not including the first anniversary of the Effective Date, \$15,000 from the first anniversary of the Effective Date until but not including the second anniversary of the Effective Date, and \$35,000 from the second anniversary of the Effective Date until but not including the third anniversary of the Effective Date).

Notwithstanding the preceding however, if the Company is a New Franchisee, then the amount payable under this Section 3.2.1 with respect to the first eighteen months of the Term shall not be, as to any calendar quarter, greater than the amount described in paragraph (b) above with respect to that quarter (even if the amount described in paragraph (a) above for such quarter would be greater the paragraph (b) amount for such quarter).

3.2.2 (a) The Pre-Credit Amount with respect to any full calendar quarter equals thirty-eight (38) cents (adjusted each quarter by the Phased Adjustment as defined below) per calendar quarter per foot of Installation Area, as that term is defined below, with respect to Installation Area located in the borough of Manhattan and equals thirty-three (33) cents (adjusted each quarter by the Phased Adjustment as defined below) per calendar quarter per foot of Installation Area, as that term is defined below, with respect to Installation Area located in the boroughs of the Bronx, Brooklyn, Queens and Staten Island. The references to thirty-eight (38) cents and thirty-three (33) cents in this paragraph are based on the assumption that this Franchise Agreement first becomes effective during the second quarter of calendar year 2015. Should this Franchise Agreement first become effective after June 30, 2015, said references to thirty-eight (38) cents and thirty-three (33) cents in this subsection shall each be deemed increased by two cents for each full calendar quarter, beginning with the second calendar quarter of calendar year 2015, which has elapsed prior to this Franchise Agreement becoming effective.

(b) The Pre-Credit Amount with respect to any period of less than a full quarter shall be calculated by multiplying the Pre-Credit Amount for a full calendar quarter by the Stub Adjustment. The Stub Adjustment for any period less than a full calendar quarter is the percentage equal to the number of days in the applicable period divided by 90.

3.2.3 The “Installation Area” is defined pursuant to the following provisions:

(a) Unless the Company submits documentation as described in Section 3.2.3(b) below, the Installation Area in each borough or portion thereof will be calculated by adding together the Block Linear Feet applicable to every Block in such borough or portion thereof in which the Company has the System within the Inalienable Property. “Block Linear Feet” applicable to any Block in the City means the number of feet (rounded to the nearest foot) that results by measuring a straight line along the surface of the street from the midpoint of the intersection at one end of the block to the midpoint of the intersection at the other end of the block. A “Block” means a mapped street of the City running from one intersection with another mapped street of the City to the next intersection with another mapped street of the City.

(b) If the Company submits documentation to the City showing to the City’s reasonable satisfaction that, with respect to any particular Block, the portion of the System located therein is located underground and that in length run less than the full Block Linear Feet of such Block, then the Installation Area with respect to the Block will be adjusted to the actual length of such facilities in lieu of the full Block Linear Feet of the Block.

(c) If the Company maintains multiple systems at any Block, as a result of, for example, multiple systems having been originally constructed for different owners which have come or hereafter subsequently come under the common ownership of the Company, then the Installation Area will be calculated separately with respect to each such system, and the sum of the multiple Installation Areas is to be applied in the calculation of the Pre-Credit Amount as described above.

(d) To the extent the Company installs or has installed facilities on a bridge or in a tunnel which is part of the Inalienable Property, the Installation Area shall include the length of the bridge or tunnel, or portion thereof, in which the Company’s facilities run and which are within the Inalienable Property. If such bridge or tunnel connects between the borough of Manhattan and another borough, the Installation Area with respect to the bridge or tunnel shall be deemed to be within Manhattan to the geographic midpoint between the bulkhead line on the Manhattan side and the bulkhead line on the other borough side when run along the line of the bridge or tunnel.

3.2.4 The “Phased Adjustment” means an increase, with respect to each calendar quarter after the first full calendar quarter to occur during the Term, in the amount of two cents (\$.02), such that, for example, with respect to the (i) second full quarter to occur during the Term, the Pre-Credit Amount will be forty (40) cents per calendar quarter per foot of Installation Area in Manhattan and thirty-five (35) cents per calendar quarter per foot of Installation Area in Staten Island, Queens, Brooklyn and the Bronx, (ii) the third full quarter to occur during the Term, the Pre-Credit Amount will be forty-two (42) cents per calendar quarter per foot of Installation Area in Manhattan and thirty-seven (37) cents per calendar quarter per foot of Installation Area in Staten Island, Queens, Brooklyn and the Bronx, with each Phased Adjustment becoming applicable at the beginning of each calendar quarter throughout the Term. The illustrative references in the preceding sentence to forty (40) cents, forty-two (42) cents, thirty-five (35) cents and thirty-seven (37) cents are based on the assumption that this Agreement

first becomes effective during the second quarter of calendar year 2015. Should this Agreement first become effective after June 30, 2015, each of said references in the preceding sentence shall be deemed increased by two cents for each full calendar quarter, beginning with the second calendar quarter of calendar year 2015, which has fully elapsed prior to this Franchise Agreement becoming effective.

The application of the Phased Adjustment increases quarterly through June 30, 2021 as described in this Section 3.2.4 is not intended to suggest that further such quarterly increases will continue to be added in the event either the Term is extended beyond June 30, 2021 as contemplated in Section 2.3.3 above or if the term of the franchise granted hereunder is otherwise renewed, it being the current intention of the parties that franchise compensation during any term beyond June 30, 2021 will be determined pursuant to the process provided for in Section 2.3.3 if applicable, or otherwise pursuant to negotiation and applicable law, without reference to any assumption that there would be further application of similar additional phased adjustments that would continue to similarly increase franchise compensation after June 30, 2021.

3.2.5 In the event that the Company or an Affiliate of the Company acts inconsistently with its obligations under Section 8.3.1 of a Cable Television Franchise agreement with the City by reducing amounts paid to the City under said agreement in a manner inconsistent with said section, then notwithstanding any other provision in this Agreement the amount next due to the City under this Section 3.2 will increase above what it would otherwise have been as provided hereunder by an amount equal to the amount the Company or its Affiliate thus reduced its payments to the City in connection with such Cable Television Franchise agreement.

3.3 Timing.

3.3.1 Initial Payment. As a condition of the occurrence of the Effective Date, the Company shall make an initial payment which shall represent the sum of (x) the Company's good faith estimate regarding the amount due under Section 3.2 hereof attributable to the initial partial calendar quarter to occur within the Term ("Initial Partial Payment"), plus (y) the Company's good faith estimate regarding the amount due under Section 3.2 (subject to Section 3.3.2) hereof attributable to the first full calendar quarter to occur within the Term. The Initial Partial Payment shall be determined by calculating a pro-rata amount based on the amount that would be due if such payment were for the first full calendar quarter.

3.3.2 Subsequent Payments. All payments made pursuant to Section 3.2 after the Initial Payment hereof must be made in advance on a quarterly basis no later than forty-five (45) days prior to the beginning of each calendar quarter with respect to which payment has not yet been made. The Company shall in good faith estimate each such quarterly payment based on the Installation Area expected to be applicable to the next quarter. Within one hundred twenty (120) days following the end of each calendar year, the Company shall calculate the exact monetary compensation due to the City pursuant to Section 3.2 hereof for all the calendar quarters of said calendar year. Should the total monetary compensation for such calendar year thus calculated be found to have exceeded the estimated quarterly payments made by the Company for such calendar year, the Company shall, within the 120-day period following the end of the calendar year, remit to the City any balance due. Should the estimated quarterly payments made by the Company for the calendar year be found to have exceeded the total calculated monetary

compensation for the year, the overpayment will constitute a credit against the next payment or payments due from the Company hereunder. However, notwithstanding anything to the contrary in the preceding sentences of this Section 3.3.2, the Company may at its option defer payment (interest-free) of up to \$65,000 of the amount due hereunder with respect to each of the first two full quarterly payments and the Initial Partial Payment (except that in no event shall the Initial Partial Payment actually paid to the City be less than \$5,000, and in the event that the Company elects to defer a portion of the Initial Partial Payment, then only the first full quarterly payment may be deferred in amounts up to \$65,000 in addition to the deferral of the Initial Partial Payment), and up to \$35,000 of the amount due hereunder with respect to the third through sixth full quarterly payments to be made pursuant to this Section 3.3.2 (except that if Company elects to defer payment of a portion of the Initial Partial Payment, then such deferral option for the third through sixth full quarterly payments shall instead be applicable for the second through fifth full quarterly payments). In the event of any such deferrals, the deferred amount with respect to each such quarter shall be due and payable on the third anniversary of the date the deferred amount would have been due had it not been deferred, but in no event later than the last day of the Term.

3.3.3 Early Payment. In any instance where Company is required to make a payment to the City, such payment may be made one year prior to the due date of such payment and without penalty.

3.4 Non-Monetary Compensation. As further compensation in exchange for the benefit and privilege of using the Inalienable Property for the purpose of offering and providing Telecommunications Services, the Company shall provide (in addition to and not in lieu of the monetary compensation required pursuant to Section 3.2 above) facilities and services constituting non-monetary compensation to the City as follows:

(a) the Company shall provide the facilities and services described in Appendix B; and

(b) if the System is used in part or in whole to provide Cable Television Service pursuant to one or more Cable Television Franchises, then the Company shall provide free of charge to each “Qualified Location” Internet access equipment and service meeting reasonable specifications intended to meet the needs of the particular location. A “Qualified Location” as that term is used in this section means each building or facility which, pursuant to any Cable Television Franchise under which Cable Television Service is provided in part or in whole using the System, is entitled to receive any Cable Television Service free of charge.

3.5 Records. The Company shall keep comprehensive itemized records of the relevant aspects of its operations in sufficient detail to enable the City to determine whether all compensation owed to the City pursuant to this Section 3 is being paid to the City.

3.6 Reservation of Rights. No acceptance of any compensation payment by the City may be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor may such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this Agreement. All amounts paid, and all representations by the Company as to amounts due hereunder, will be subject to audit by the City.

3.7 Ordinary Business Expense. Nothing contained in this Section 3 or elsewhere in this Agreement is intended to prevent the Company from treating the compensation that it pays pursuant to this Agreement as an ordinary expense of doing business and, accordingly, from deducting said payments from gross income in any City, state, or federal income tax return.

3.8 Costs Related to Company-Sought Transactions. The Company shall, as part of the reasonable compensation payable to the City for use of the Inalienable Property, pay, in addition to and not in lieu of all other reasonable compensation due hereunder, to the City or to third parties, at the direction of DoITT, an amount equal to the reasonable costs and expenses which the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any Company-sought renegotiation, transfer, amendment or other modification of this Agreement or the Franchise granted hereunder during the Term, provided the City has given the Company notice in advance of any work being performed by such third party. Such modifications shall not include the renegotiation, renewal or other modifications that take place at the end of the Term in the normal course of dealing between the City and the Company in anticipation of a possible extension or renewal of the Company's rights. The Company expressly agrees that the payments made pursuant to this Section 3.8 are in addition to and not in lieu of, and may not be offset against, the compensation to be paid to the City by the Company pursuant to other provisions of this Section 3.

3.9 No Credits or Deductions.

(a) The Company, as part and parcel of its agreement hereunder to pay reasonable compensation for the use of the Inalienable Property, expressly acknowledges and agrees that:

(i) the compensation to be provided pursuant to this Section 3 may not be deemed to be in the nature of a tax, and is in addition to any and all taxes or other fees or charges which the Company or any Affiliate must pay to the City or to any state or federal agency or authority, all of which are separate and distinct obligations of the Company; and

(ii) with respect to the Franchise granted pursuant to this Agreement, the Company expressly relinquishes and waives its rights and the rights of any Affiliate to a deduction or other credit pursuant to Section 626 of the New York State Real Property Tax Law and any successor or amendment thereto, and (to the extent such waiver is permitted by law) to any subsequent law, rule, regulation, or order which would purport to permit any of the acts prohibited by this Section 3.9; and

(iii) except as might be permitted by Section 3.7, the Company may not, and may not otherwise support any attempt by an Affiliate to, make any claim for any deduction of, or other credit for, all or any part of the amount of the compensation (whether monetary or in-kind), or other consideration to be provided pursuant to this Agreement from or against any City or other governmental taxes of general applicability or other fees or charges which the Company or any Affiliate is required to pay to the City or other governmental agency; and

(iv) except as might be permitted by Section 3.7, the Company may not, and may not otherwise support any attempt by an Affiliate to, apply or seek to apply all or any part of the amount of the compensation (whether monetary or in-kind) or other consideration to be provided pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which are hereby deemed to be separate and distinct obligations of the Company and the Affiliates; and

(v) except as might be permitted by Section 3.7, the Company may not, and may not otherwise support any attempt by an Affiliate to, apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the consideration to be provided pursuant to this Agreement, each of which are hereby deemed to be separate and distinct obligations of the Company and the Affiliates.

(b) In any situation where the Company believes the effect of this Section 3.9 is unduly harming, in a manner inconsistent with the intent of this Section 3.9, an Affiliate of the Company or the Company may petition the Commissioner for relief, and such relief will not be unreasonably withheld.

3.10 Interest on Late Payments. In the event that any payment required by this Agreement is not actually received by the City on or before the applicable date fixed in this Agreement, interest thereon will accrue from such date until received at a rate equal to the rate of interest then in effect that would be charged by the City for late payments of water charges of a comparable amount.

3.11 Method of Payment. Except as provided elsewhere in this Agreement, all payments made by the Company to the City pursuant to this Agreement must be paid to the City's Department of Finance and must be sent to DoITT, c/o Director of Franchise Audits and Revenue, 2 Metrotech Center, 4th Floor, Brooklyn, New York 11201, or to such alternative payee and/or address as DoITT may designate by written notice to the Company from time to time.

3.12 Continuing Obligation and Holdover. In the event the Company continues to operate within the Inalienable Property all or any part of the System after the Term for the purpose of providing Telecommunications Services, then (a) the Company shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation may not be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the Term, including, but not limited to, damages and restitution and (b) in addition to all other remedies available to the City under this Agreement or by law, the Company shall also pay to the City all payments that the City is entitled to receive under this Agreement including, but not limited to, the compensation set forth in this Section 3 as if the Term remained in effect.

SECTION 4 CONSTRUCTION AND MAINTENANCE REQUIREMENTS

4.1 Generally. The Company agrees to exercise its right described in Section 2.3.1 above in accordance with the standards of work and operation as set forth in this Section 4 and Appendix A attached hereto and incorporated herein. The facilities to be installed in the Inalienable Property pursuant to this Agreement are not to materially exceed in size or otherwise differ in the nature of the imposition placed on the Inalienable Property from that which is standard in the industry with respect to the provision of the Telecommunications Services. To the extent that the Company seeks to install or maintain facilities that exceed such standard, the City reserves the right to require the Company to obtain additional authority from the City to do so as such authority is not being granted by the Franchise covered hereby.

4.2 Quality. In order to assure that the Inalienable Property and its continuing use by the public is adequately protected, all work involved in the construction, operation, maintenance, repair, upgrade and removal of the System located within the Inalienable Property must be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by any entity with applicable authority or jurisdiction that any part of the System located within the Inalienable Property is harmful to the public health or safety, then the Company shall, at its own cost and expense, take all steps necessary to correct all such conditions.

4.3 Licenses and Permits. In order to assure that the Inalienable Property and its continuing use by the public is adequately protected, the Company has the sole responsibility for diligently obtaining, at its own cost and expense, and thereafter complying with, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, upgrade or repair the System located within the Inalienable Property, including, but not limited to, any necessary approvals from Persons to use any privately-owned equipment or other property (including, without limitation, any privately-owned easements, poles and conduits) located within the Inalienable Property.

4.4 Public Works and Improvements. Nothing in this Agreement shall, and nothing in this Agreement is intended to, abrogate the right of the City to perform, or to arrange to have performed, any public works or public improvements of any description or change, or to arrange to have changed, the grades, lines or boundaries of any Inalienable Property. In the event that the System interferes with the installation, upgrade, construction, operation, maintenance, repair, relocation or removal of such public works or public improvements, or such change in grades, lines or boundaries, then Section 4.7 of this Agreement will apply.

4.5 No Waiver. Nothing in this Agreement may be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require the Company, or other Persons using, constructing or maintaining the System, to secure the appropriate permits or authorizations for such use, provided that (except as set forth in to Section 2.4.2(c)) no fee or charge may be imposed for any such permit or authorization, other than the standard fees or charges generally applicable to all Persons for such permits or authorizations. Any such standard fee or charge may not be an offset against, or in lieu of, the amounts the Company has agreed to pay to the City pursuant to Section 3 of this Agreement.

4.6 Eliminated, Discontinued, Closed Or Demapped Streets Or Other Inalienable Property. In the event that all or any part of the Inalienable Property is eliminated, discontinued, closed or

demapped, or the status of such property otherwise changes so that it is no longer to be included in the category of Inalienable Property, all rights and privileges of the Company acknowledged and recognized pursuant to this Agreement with respect to said (formerly) Inalienable Property, or any part thereof, so eliminated, discontinued, closed, demapped or otherwise recategorized, will cease upon the effective date of such elimination, discontinuance, closing, demapping or other such recategorization and the Company shall at the direction of the City and upon reasonable notice from the City remove any and all or any portion of the System located within such property by a date not later than the effective date of such elimination, discontinuance, closing, demapping or other recategorization or such later date as the City may direct.

4.7 Protection, Relocation, Alteration of the System. In the event that the System interferes with the installation, construction, upgrade, operation, maintenance, repair, relocation or removal of public works or public improvements, or in the event the grades, lines or boundaries of any Inalienable Property are changed at any time during the Term in a manner affecting the System, then the Company shall, at its own cost and expense (unless dedicated funds have been provided to the City by another entity specifically for such purpose), upon reasonable notice from the City, promptly protect or alter or relocate the System, or any part thereof, as directed by the City. In the event that the Company refuses or neglects to so protect, alter or relocate all or part of the System, the City has the right, upon notice by the City, to break through, remove, alter, or relocate all or any part of the System without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.

4.8 City Authority to Move Facilities. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any part of the System within the Inalienable Property, in which event the City will not be liable therefor to the Company. If practicable, the City will notify the Company in writing prior to such cutting or moving, but in any event will notify the Company in writing as soon as possible following any such action.

4.9 Company Required to Move Facilities. The Company shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move the System within the Inalienable Property to permit the moving of said structure (provided that for the duration of any period that any portion of the System moved pursuant to this Section 4.9 is out of service as a result of such action by the City, and such out of service status is documented by the Company to the reasonable satisfaction of DoITT, such facilities shall be treated as not “being used for the provision of Telecommunications Services” for purposes of the definition of Installation Area set forth in Section 3.2.3 hereof). The Company may impose a reasonable charge on any Person other than the City for any such movement of the System.

4.10 Protect Structures. In connection with the construction, operation, maintenance, repair, upgrade or removal of the System within the Inalienable Property, the Company shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks and historic pavements, as well as all other structures within any designated landmark district. The Company shall obtain the prior approval of the City before undertaking any alteration of any water main, sewerage or drainage system, equipment or facility or any other

municipal structure within the Inalienable Property, required because of the presence of the System. The Company shall make any such alteration at its own cost and expense and in a manner prescribed by the City. The Company agrees to be liable, at its own cost and expense, to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Inalienable Property involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Company.

4.11 No Obstruction. In connection with the construction, operation, maintenance, upgrade, repair or removal of the System, the Company may not, without the prior consent of the appropriate authorities, obstruct the Inalienable Property, or the subways, railways, passenger travel, river navigation, or other pedestrian or vehicular traffic that is using the Inalienable Property.

4.12 Safety Precautions.

(a) The Company shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites within the Inalienable Property, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting.

(b) The Company agrees to apply for membership in the Mutual Aid and Restoration Consortium (“MARC”) and if accepted for such membership, to execute the then applicable MARC agreement, and be fully active in MARC activities, including participation in MARC alerts, drills and meetings. If it is determined by a court of competent jurisdiction after all appeals have been exhausted that the agreement by the Company described in the preceding sentence is, pursuant to federal law, not enforceable against the Company, then this provision will be severed from this Agreement, and this Agreement will remain in effect as if this provision had not been included.

SECTION 5 SECURITY FUND AND GUARANTY

5.1 General Requirement. Prior to or simultaneously with the execution and delivery of this Agreement, the Company shall have arranged for the Credit Support to be available to the City in an amount equal to the product of four times the portion of the initial payment described in Section 3.3.1 (subject to Section 3.3.2) estimated to be attributable to the first full calendar quarter of the Term but in no event will the initial Credit Support provided to the City be less than \$40,000. The Credit Support must be in a form reasonably satisfactory to the City, and the Credit Support will serve as a security fund (the “Security Fund”), securing the Company’s full payment and performance of its obligations under this Agreement. Throughout the Term, and for one year thereafter, the Company shall maintain the Security Fund in the amount specified in this Section 5.1 provided that each time the monetary compensation payable by the Company to the City under Section 3.2 hereof exceeds the aggregate amount of the Credit Support by at least fifty thousand dollars (\$50,000) during any one calendar year then, within one hundred twenty (120) days of the end of such calendar year, the aggregate amount of the Credit Support must be increased to and maintained (until any future such increase) at an amount equal to said compensation for such year rounded up to the next non-fractional multiple of one hundred

thousand dollars (\$100,000). Notwithstanding anything to the contrary in the preceding sentence, in no event shall the Security Fund in place after the one hundred twentieth (120th) day of any calendar year be less than the amount applicable to such calendar year under Section 3.2.1(b) above.

5.2 Purpose. The Security Fund will serve as security for full payment and performance by the Company in accordance with this Agreement and any costs, losses or damages incurred by the City as a result of any failure by the Company to abide by any provision or provisions of this Agreement.

5.3 Withdrawals from the Security Fund. In the circumstances described in Section 9.3 hereof, the City may withdraw from the Security Fund such amount as necessary to satisfy (to the degree possible) the Company's obligations not otherwise met (and to reimburse the City for costs, losses or damages incurred as the result of the Company's failure(s) to meet its obligations), provided, however, that the City may not make any withdrawal by reason of any breach or default of which the Company has not been given notice. The City may not seek recourse against the Security Fund for any costs or damages for which the City has previously been compensated through a withdrawal from the Security Fund or otherwise by the Company.

5.4 Notice of Withdrawals. Within one (1) week after any withdrawal from the Security Fund, the City shall notify the Company of the date and amount thereof. The withdrawal of amounts from the Security Fund will constitute a credit against the amount of the applicable liability of the Company to the City but only to the extent of said withdrawal.

5.5 Replenishment by the Company. Within thirty (30) days after receipt of notice from the City that any amount has been withdrawn from the Security Fund, as provided in Section 5.4 hereof, the Company shall replenish the Security Fund to the amount specified in Section 5.1 hereof, by submitting such documentation as may be necessary to restore the Credit Support which constitutes the Security Fund to the full amount required by Section 5.1. If the Company has not made the required replenishment of the Security Fund within such thirty (30) day period, liquidated damages for such failure will accrue at the rate specified in Section 3.10 hereof, such accrual to commence at the end of such 30-day period, and which liquidated damages shall be payable to the City as reasonable compensation to the City for its loss of securitization for the Company's obligations hereunder.

5.6 Replenishment by the City. If a court finally determines that a withdrawal from the Security Fund by the City was improper, the City shall refund the improperly withdrawn amount to the Company such that the balance in the Security Fund will not exceed the amount specified in Section 5.1 hereof.

5.7 Not a Limit on Liability. The Company's obligations of payment and performance, and the liability of the Company pursuant to this Agreement, will not be limited by the amount of the Security Fund required by this Section 5.

5.8 Renewal. Any letter of credit that is to constitute the Security Fund required hereunder must provide that it will not be cancelled, and will not expire without renewal, except after at least sixty (60) days' notice to the City of the impending cancellation, or expiration without

renewal, of such letter of credit. Any failure to replace or renew a Security Fund letter of credit by a date which is thirty (30) days prior to the impending cancellation or expiration of such a letter of credit will constitute an Event of Default under this Agreement, which the City may cure by (a) drawing on the Security Fund and itself holding the proceeds as a replacement Security Fund (with all rights to draw on the proceeds for Security Fund purposes as provided under this Agreement) until such time as the Company completes the required letter of credit replacement or renewal or (b) exercising any other lawful remedy or remedies. Interest earned on proceeds held by the City as a replacement Security Fund will be retained by the City.

SECTION 6 RIGHT OF WAY MANAGEMENT IMPLEMENTATION MATTERS

6.1 Protection from Disclosure. To the extent permissible under applicable law, the City shall protect from disclosure any confidential, proprietary information submitted to or made available by the Company to the City under this Agreement, provided that the Company notifies the City of, and clearly labels, the information which the Company deems to be confidential, proprietary information as such. Such notification and labeling will be the sole responsibility of the Company.

6.2 Management and Records. To the extent necessary to preserve, protect and otherwise manage the Inalienable Property, the City will have the right to oversee, regulate and inspect periodically the construction, maintenance, operation and upgrade of the System located within the Inalienable Property, including any part thereof, in accordance with the provisions of this Agreement and applicable law. To the extent consistent with the City's right to thus preserve, protect and otherwise manage the Inalienable Property, and/or the City's right to assure that it is being and will be paid the compensation due under this Agreement, the Company shall establish and maintain managerial and operational records, standards, procedures and controls to enable the Company to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that the Company is complying with the terms of this Agreement. The Company shall retain such records for not less than six (6) years following their creation and for such additional period as DoITT may reasonably direct consistent with the goals of such record retention described in this Section 6.2. In order to support the City's ability to appropriately preserve, protect and otherwise manage the Inalienable Property, the Company shall on an annual basis provide DoITT with a report (in form and format reasonably acceptable to the Commissioner) describing any construction or installation of cable, wire, fiber optic telecommunications cable, or other closed-path transmission medium that may be used in lieu of cable, wire, fiber optic telecommunications cable, or other facilities and equipment within the Inalienable Property (phrases such as "within the Inalienable Property", "of the Inalienable Property", "manage the Inalienable Property" etc. as used in this Agreement will be deemed to refer to and include, in addition to the surface of the Inalienable Property, any space on, over and under the surface of the Inalienable Property, unless expressly stated otherwise) that has occurred during the previous twelve months, which report must include a map of such constructed or installed facilities that is consistent in form with the requirements of Section B.5. of Appendix A attached hereto. Each such report must include safety and compliance review and inspection documentation as required by law and as further reasonably required by DoITT. The Company must deliver the first such report no earlier than January 1 of the first full calendar year falling entirely within the Term and no later than the first anniversary of the Effective Date, with each successive report thereafter to be delivered annually between January 1 and the anniversary of the Effective Date. In order to

further advance the City's ability to appropriately preserve, protect and otherwise manage the Inalienable Property, the Company shall on an annual basis, provide DoITT with a report describing the Company's reasonably anticipated plans for the coming twelve months for any construction or installation of the System within the Inalienable Property. The first such report must be delivered no earlier than January 1 of the first full calendar year falling entirely within the Term and no later than the first anniversary of the Effective Date, with each successive report thereafter to be delivered annually between January 1 and the anniversary of the Effective Date. The Company shall further provide to the City, upon the City's request, and within a reasonable period under the circumstances, any additional information, material and/or reports that the City reasonably deems necessary to the City's efforts to preserve, protect and otherwise manage the Inalienable Property or to assure that the City is being and will be paid the compensation due from the Company under this Agreement.

6.3 Rules and Regulations. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue (in accordance with lawful procedures for such adoption or issuance) such rules, regulations, orders, or other directives that are not inconsistent with the terms of this Agreement and are reasonably necessary or appropriate in the lawful exercise of the City's authority as manager of the Inalienable Property and its police powers, and the Company agrees to comply with all such lawful rules, regulations, orders, or other directives.

6.4 Ownership Reports. In order to assist the City in determining whether the Company is capable of ongoing compliance with this Agreement, including, without limitation, ongoing payment of the amounts payable by the Company hereunder, the Company shall promptly report to the City any change in ownership of the Company which is inconsistent with the description of ownership set forth in Appendix D hereof or the most recently submitted previous such report.

6.5 Books and Records/Audit

6.5.1 Records. To the extent appropriate to assist the City in determining whether the Company is taking appropriate care of the Inalienable Property, complying with the terms of this Agreement, and paying the amounts payable by the Company hereunder, the Company shall throughout the Term maintain complete and accurate records of the operations of the Company with respect to the System in a manner that allows the City at all times to determine whether the Company is in compliance with this Agreement. All records required to be maintained hereunder must be retained for not less than six (6) years from the date of their creation.

6.5.2 Right of Inspection. To the extent appropriate to assist the City in determining whether the Company is taking appropriate care of the Inalienable Property, complying with the terms of this Agreement, and paying the amounts payable by the Company hereunder, the Commissioner and the Comptroller, or their designated representatives, will have the right to inspect, examine or audit during normal business hours and upon reasonable notice to the Company under the circumstances, all documents, records or other information which pertain to the Company or any Affiliate with respect to the System and its operation or the Company's performance under this Agreement. All such documents must be made available within New York City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit, provided, however, that if such documents are located outside

of the City, then, upon notice to the Company, the Company shall pay the reasonable expenses incurred by the Commissioner, the Comptroller or their designated representatives in traveling to such location. Access by the City to any of the documents covered by this Section 6.5.2 may not be denied by the Company on grounds that such documents are alleged by the Company to contain confidential, proprietary or privileged information, provided that this requirement will not be deemed to constitute a waiver of the Company's right to assert that confidential, proprietary or privileged information contained in such documents should not be disclosed by the City as described in Section 6.1 above.

SECTION 7 TRANSFERS AND ASSIGNMENTS

7.1 City Approval Required. The ownership and control structure of the Company as of the date of execution of this Agreement is set forth in Appendix D hereof. Subject to the provisions of this Article, each of the following shall be subject to the prior approval of the City: (i) any sale, assignment or transfer of the franchisee's interest in this Agreement, the System or the franchise granted hereunder, (ii) any transaction in which any change is proposed, which would result, directly or indirectly, in a change in the ownership of twenty percent (20%) or more of the voting interests or thirty-three percent (33%) or more of the non-voting interests of the ownership of the Company or the System assets or the franchise granted hereunder, and (iii) any other transaction in which a change in "Control" (as defined in Section 1.11 above) of the Company, the System or the franchise granted hereunder would occur; provided, however, that the foregoing requirements of this Section 7.1 will not be applicable with respect to (a) transfers of any ownership interests expressly permitted in the "Permitted Transfers" section, if any, of Appendix D, or (b) which are effectuated as a result of any transactions involving the exchange of publicly traded shares. To the fullest extent practical under the circumstances, application to the City for any approval required hereunder must be made at least one hundred twenty (120) calendar days prior to the contemplated effective date of the transaction. Such application must contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

- (a) any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;
- (b) a report detailing any changes in ownership of voting or non-voting interests of over five percent (5%);
- (c) other information necessary to provide an accurate understanding of the financial position of the Company and the System before and after the proposed transaction;
- (d) information regarding any potential impact of the transaction on rates and service of subscribers; and
- (e) any material contracts that relate to the proposed transaction as it affects the City and, upon reasonable request by the City, all material documents and other information related or referred to therein and which are necessary to understand the proposed transaction;

provided, however, that if the Company believes that the requested information is confidential and proprietary, then the Company must provide the following documentation to the City: (i) specific identification of the information; (ii) a statement attesting to the reason(s) the Company believes the information is confidential; and (iii) a statement that the documents are available at the Company's designated offices for inspection by the City.

7.2 City Action on Transfer. To the extent not prohibited by federal law, the City may, with respect to any transaction covered by Section 7.1: (i) grant; (ii) grant subject to conditions directly related to concerns relevant to such transaction; or (iii) deny its approval of the transaction.

7.3 Waiver of Transfer Application Requirements. To the extent consistent with federal law, the City may waive in writing any requirement that information be submitted as part of the transfer application covered by Section 7.1, without thereby waiving any rights the City may have to request such information after the application is filed.

7.4 Subsequent Approvals. The City's approval of a transaction described in Section 7.1 in one instance will not render unnecessary approval of any subsequent transaction.

7.5 Approval Does Not Constitute Waiver. Approval by the City of a transfer described in Section 7.1 will not constitute a waiver or release of any of the rights of the City under this Agreement, whether arising before or after the date of the transfer, except that upon full assumption of the terms of this Agreement by an approved transferee, the transferor shall be fully released from any obligations accruing after the date of such assumption.

7.6 No Consent Required For Transfers Securing Indebtedness. The Company will not be required to file an application or obtain the consent or approval of the City for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Company in the System, system assets or the Franchise granted hereunder in order to secure indebtedness. However, the Company will notify the City within ten (10) days if at any time there is a mortgage or security interest granted on the System, the Franchise granted hereunder or substantially all of the assets of the System. To the extent applicable, the submission of the Company's audited financial statements prepared for the Company's bondholders will constitute such notice.

7.7 Preliminary Determination Procedure. In the event that a change in direct or indirect ownership interest or interests in the Company, the System or the Franchise granted hereunder, is planned and the Company seeks the City's view of whether such transaction is one that would require the City's approval as described in Section 7.1 above, the Company may submit a written request to the Commissioner (in accordance with the notice requirements of Section 10.4 hereof) describing the proposed transaction and seeking a determination as to whether such approval is required and including any arguments the Company wishes to make that the consent of the City is not required. Upon review of such written request, the Commissioner will notify the Company in writing of the Commissioner's determination whether such approval by the City is required, provided that prior to such determination, if the Commissioner reasonably requests any information relevant to such determination, the Company shall provide such information.

SECTION 8 LIABILITY AND INSURANCE

8.1 Liability and Indemnification. The Company will be liable for, and the Company and each Affiliate (but not including any member of the Company or any owner of such member) will indemnify, defend and hold the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors (the “Indemnitees”) harmless from, any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable attorneys’ fees and disbursements) (collectively “Liabilities” and each individually a “Liability”, and including, without limitation, damages or loss to any real or personal property of, or any injury to or death of, any Person or the City), that may be imposed upon or incurred by or asserted against any of the Indemnitees arising out of the construction, operation, maintenance, upgrade, repair, removal or relocation of the System or otherwise arising out of or related to this Agreement; provided, however, that the foregoing liability and indemnity obligation of the Company pursuant to this Section 8.1 will not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors. Further, it is a condition of this Agreement that the City assumes no liability for any Liability or Liabilities to either Persons or property on account of the same, except as expressly provided herein.

8.2 Limitation on Liability for Public Work, etc. None of the City, its officers, agents, servants, employees, attorneys, consultants or independent contractors will have any liability to the Company for any damage as a result of or in connection with the protection, breaking through, movement, removal, alteration, or relocation of any part of the System by or on behalf of the Company or the City in connection with any emergency, public work, public improvement, alteration of any municipal structure, any change in the grade or line of any Inalienable Property, or the elimination, discontinuation, closing or demapping of any Inalienable Property. When reasonably possible, the Company will be consulted prior to any such activity and given the opportunity to perform such work itself, but the City will have no liability to the Company in the event it does not so consult the Company. All costs to repair or replace the System, or parts thereof, damaged or removed as a result of such activity, must be borne by the Company; provided, however, that the foregoing obligations of the Company pursuant to this Section 8.2 will not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

8.3 Limitation on Liability for Damages. None of the City, its officers, agents, servants, employees, attorneys, consultants and independent contractors have any liability to the Company for any special, incidental, consequential, punitive, or other damages as a result of the lawful exercise of any right of the City pursuant to this Agreement or applicable law; provided, however, that the foregoing limitation on liability pursuant to this Section 8.3 will not apply to any gross negligence or willful misconduct of the City, its officers, employees, servants, agents, attorneys, consultants or independent contractors.

8.4 Defense of Claim, etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 8.1 hereof, then upon demand by the City, the Company shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee’s name, by the attorneys for, or approved by, the Company’s insurance carrier (if such claim, action or proceeding is covered by insurance) or by the

Company's attorneys. The foregoing notwithstanding, upon a showing that the Indemnitee reasonably requires additional representation, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, and the Company shall pay the reasonable fees and disbursements of such attorneys of such Indemnitee.

8.5 Liability for Damages to City Property. The Company shall reimburse, indemnify and hold harmless the City for any and all loss or damage to any municipal structure, Inalienable Property or other property of the City occurring during the course of any construction, operation, maintenance, upgrade, repair, relocation or removal of the System. This Section 8.5 will not apply to loss or damage which is the result of the gross negligence or willful misconduct of the City.

8.6 Insurance. The Company shall, on the Effective Date, have all insurance required by this Section 8.6 and the Company shall ensure continuous insurance coverage in the manner, form and limits required by this Section 8.6 throughout the Term and so long as the Company has facilities within the Inalienable Property.

8.6.1 Commercial General Liability Insurance. (a) The Company shall maintain Commercial General Liability insurance covering the Company as a named insured in the minimum amount of \$10,000,000 per occurrence and a minimum of \$10,000,000 aggregate. The use of an excess or umbrella policy is allowable to meet the limit. Such insurance shall protect the Company, 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 this Agreement. 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 policy shall include an endorsement providing that no cancellation or non-renewal of such policy will be effective without at least thirty (30) days prior written notice to the City delivered by either registered mail or other delivery method that provides proof of receipt.

(b) Such Commercial and 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.

8.6.2 Workers' Compensation, Disability Benefits and Employer's Liability Insurance. The Company shall maintain Workers' Compensation Insurance, Disability Benefits Insurance and Employer's Liability Insurance, in accordance with laws of the State of New York, on behalf of, or with regard to, all employees undertaking activities pursuant to or authorized by this Agreement.

8.6.3 Unemployment Insurance. To the extent required by law, the Company shall provide Unemployment Insurance for its employees.

8.6.4 Business Automobile Liability Insurance. (a) If vehicles are used in the provision of services under this Agreement, then the Company shall maintain Business Automobile Liability insurance in the amount of at least \$1,000,000 each accident combined

single limit for bodily injury and property damage and Excess or Umbrella Liability insurance to raise the aggregate coverage to a minimum of \$2,000,000 per accident for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles to be used in connection with this Agreement; and such coverage shall be at least as broad as the most recently issued ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, then the Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48), as well as proof of MCS-90.

8.6.5 General Requirements for Insurance Coverage and Policies

(a) All required insurance policies shall be maintained with companies that may lawfully issue the required policy and that have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City's Law Department;

(b) All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City;

(c) The Company shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy;

(d) There shall be no self-insurance program with regard to any insurance required under this Section 8.6, unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Section 8.6, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies; and

(e) The City's limits of coverage for all types of insurance required under this Section 8.6 shall be the greater of (i) the minimum limits set forth in this Section 8.6.1, or (ii) the limits provided to the Company as a named insured under all primary, excess, and umbrella policies of that type of coverage.

8.6.6 Proof of Insurance.

(a) For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Company shall provide as a condition to the occurrence of the Effective Date one of the following (ACORD forms are not acceptable proof of workers' compensation coverage):

C-105.2 Certificate of Workers' Compensation Insurance;

U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;

Request for WC/DB Exemption (Form CE-200);

Equivalent or successor forms used by the New York State Workers' Compensation Board; or

Other proof of such insurance in a form acceptable to the City;

(b) For each policy required under this Agreement, except for Workers'

Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Company shall, as a condition to the occurrence of the Effective Date, file a certificate of insurance with DoITT. All certificates of insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Company's general liability policy by which the City has been made an additional insured pursuant to Section 8.6.1 above. All certificates of insurance shall also be accompanied by either a duly executed "Certification by Broker" in the form attached as Appendix E or copies of all policies referenced in the certificate of insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted;

(c) Certificates of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section 8.6. Such certificates of insurance shall comply with the requirements of this Section 8.6 as applicable;

(d) The Company shall provide the City with a copy of any policy required under this Section 8.6 upon the demand for such policy by the Commissioner or the City's Law Department;

(e) Acceptance by the Commissioner of a certificate or a policy does not excuse the Company from maintaining policies consistent with all provisions of this Section or from any liability arising from its failure to do so; and

(f) In the event the Company receives any notice from an insurance company or other person that any insurance policy required under this Section shall expire or be cancelled or terminated for any reason, the Company shall immediately forward a copy of such notice to the City.

8.6.7 Miscellaneous Insurance Matters.

(a) Whenever any notice of any loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Section, the Company shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Company may not have coverage under such policy (for example, where one of the Company's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Company shall simultaneously send a copy of such notice to the "City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007". If the Company fails to comply with the requirements of this paragraph, then the Company shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City;

(b) The Company's failure to maintain any of the insurance required by this Section shall constitute a material breach of this Agreement. Such breach shall not be waived or

otherwise excused by any action or inaction by the City at any time;

(c) Insurance coverage in the minimum amounts required in this Section shall not relieve the Company of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable law;

(d) The Company waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Company in connection with this Agreement.

(e) the Company will be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and is authorized to provide service pursuant to this Agreement and the franchise granted hereunder only during the effective period of all required coverage (in the event authorization to provide service hereunder ceases by reason of the non-effectiveness of any such required insurance coverage, such authorization to provide service will be automatically restored, without any additional required action by any party, upon the effectiveness of all required insurance coverage being restored).

SECTION 9 BREACHES AND REMEDIES

9.1 Not Exclusive. The Company agrees that the City will have the specific rights and remedies set forth in this Section 9 to the fullest extent permitted by law. These rights and remedies are in addition to and cumulative of any and all other rights or remedies, existing or implied, now or hereafter available to the City at law or in equity in order to enforce the provisions of this Agreement. Such rights and remedies will not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the City, except as provided herein. The exercise of one or more rights or remedies by the City will not be deemed a waiver by the City of the right to exercise at the same time or thereafter any other right or remedy nor will any delay in, or omission of, the exercise of any remedy be construed to be a waiver by the City of or acquiescence to any default. The exercise of any such right or remedy by the City will not release the Company from its obligations or any liability under this Agreement, provided, however, that the City will in no case be entitled to duplicate recoveries from different sources.

9.2 Default.

9.2.1 Events of Default.

(a) Any of the following will constitute an Event of Default:

(i) any breach, not cured within fifteen (15) days after notice pursuant to Section 9.2.2 below, of a provision of this Agreement requiring the Company (x) to make any payment to the City when due, or (y) to maintain a liability insurance policy as set forth in Section 8.6, or

(z) to maintain, renew and/or replenish the Security Fund as required pursuant to this Agreement;
or

(ii) any other breach of this Agreement by the Company that is not cured within thirty (30) days (or such longer period as DoITT may deem appropriate in its discretion) after notice pursuant to Section 9.2.2 below (provided, however, that no Event of Default will exist pursuant to this clause (ii) if a breach is curable but work to be performed, acts to be done, or conditions to be removed cannot, by their nature, reasonably be performed, done or removed within the required thirty (30)-day cure period, so long as the Company has commenced curing the same within said thirty (30)-day cure period and shall diligently and continuously prosecute the same promptly to completion).

(b) Notice and cure periods provided in this Section 9.2.1, or elsewhere in this Agreement, during which a failure to make a payment to the City when due does not mature into an Event of Default shall not be construed as deferring the accrual of interest on the amount unpaid as set forth in Section 3.10 hereof, which interest shall accrue from the date was payment was due and not from the date (if any) the failure to make timely payment matured into an Event of Default.

9.2.2 Notice and Cure Procedures.

(a) The Commissioner will notify the Company, in writing, of any breach by the Company of an obligation under this Agreement, in accordance with Section 10.4 hereof. The notice will specify the alleged breach(es) with reasonable particularity. The Company shall either (i) if applicable, within the period of time specified in (as applicable) Section 9.2.1(a) hereof, or such longer period of time as the Commissioner may in his or her discretion specify in such notice, cure such alleged breach(es); or (ii) in a written response submitted to the Commissioner within fifteen (15) days after the notice of breach, present facts and arguments refuting that a breach has occurred. The submission of such a response, provided there is a bona fide, reasonable basis for such response, will toll the running of the applicable cure period provided for in Section 9.2.1(a) hereof, such tolling to be effective until the City responds in writing to such submission.

(b) If the Company fails to cure the breach within the applicable cure period and fails to submit a response to the Commissioner pursuant to Section 9.2.2(a) hereof within the period provided herein for submitting such response, an Event of Default will be deemed to have occurred.

(c) If, after the Company makes a response to the Commissioner pursuant to Section 9.2.2(a) hereof, the Commissioner determines, in his or her reasonable discretion, that a breach under this Agreement has occurred, the Company must cure such breach within the balance of the time period to cure that remained when the submission was made. If the Company fails to cure within the remaining time, the breach will be deemed to be an Event of Default, provided, however, that no Event of Default will exist if a breach for which a cure period is provided herein is curable, but work to be performed, acts to be done, or conditions to be removed cannot, by their nature, reasonably be performed, done or removed within the cure period remaining, so long as the Company has commenced curing the same within the cure

period provided and shall diligently and continuously prosecute the same promptly to completion. For purposes of this Section 9, “cure” includes not only the Company coming into compliance with this Agreement on a going-forward basis, but also compensating the City for any injury or damages it has suffered during the period of non-compliance directly as a result of such non-compliance, unless such non-compliance resulted from events beyond the Company’s reasonable control.

9.3 Remedies of the City.

(a) Subject to Section 9.3(b), upon an Event of Default (or upon any act or failure to act by the Company, or the occurrence of a set of circumstances relating to the Company or its activities, which under common law principles would constitute an anticipatory breach of this Agreement), DoITT may at its option take any one or more of the following actions: cause a withdrawal from the Security Fund; seek money damages (and if such damages are awarded collect such) from the Company as compensation for the breach of this Agreement; seek to restrain by injunction the Event of Default (or in the case of anticipatory breach the anticipated Event of Default); and/or invoke any other available remedy that would be permitted by law. DoITT will give the Company notice in writing when it determines to pursue one or more such remedies, but nothing herein will prevent DoITT from electing more than one remedy, simultaneously or consecutively, for any breach, provided, however, that the City will in no case be entitled to duplicate recoveries from different sources.

(b) DoITT shall have the right to terminate this Agreement prior to its scheduled expiration only in connection with an Event of Default which (i) remains uncured after the expiration of the applicable cure period provided for in Section 9.2.1 and (ii) constitutes a material breach of this Agreement that has deprived the City from receiving a significant portion of the rights or other entitlements, as expressly set forth in this Agreement, bargained for by the City (a “material and significant breach”), examples, without limitation, of a “material and significant breach” being (1) failure to maintain in effect the Security Fund as set forth in Section 5 hereof, (2) if the Company intentionally makes a material false or misleading statement or representation to the City relating to the documentation of Franchisee’s compliance with its obligations under this Agreement, (3) if the Company fails to maintain the insurance coverage required by or otherwise materially breaches Section 8 of this Agreement, (4) if the Company engages in a course of conduct intentionally designed to practice fraud or deceit upon the City, (5) if the Company intentionally engages or has intentionally engaged in any material misrepresentation with respect to any representation or warranty contained herein, and (6) any Event of Default which constitutes part of a persistent pattern of material failures by the Company to abide by one or more of its obligations under this Agreement, even if a single such failure might not by itself constitute a “material and significant breach”.

SECTION 10 MISCELLANEOUS

10.1 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in said Appendices, incorporated herein by reference and expressly made a part of this Agreement.

10.2 Entire Agreement. This Agreement, including all Appendices hereto, embodies the entire understanding and agreement of the City and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements and understandings, whether oral or written, between the City and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the City or the Company.

10.3 Delays and Failures Beyond Control of Company. Notwithstanding any other provision of this Agreement, the Company will not be liable for delay in the performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure where the Company has exercised all due care in the prevention thereof, or other causes or events, to the extent that such causes or events are beyond the control of the Company (provided that mere financial incapacity will not constitute a cause or event beyond the control of the Company for purposes of this Section 10.3). In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct said cause(s). The Company agrees that in correcting said cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible. The Company shall notify DoITT in writing of the occurrence of an event covered by this Section 10.3 within five (5) business days of the date upon which the Company learns or should have learned of its occurrence.

10.4 Notices. Every notice, order, petition, document, or other direction or communication to be served upon the City or the Company must be in writing and be sent by registered or certified mail, return receipt requested or by a recognized overnight delivery service such as Federal Express. Every such communication to the Company must be sent to its office located at 2187 Atlantic Street, Stamford, CT 06092, or to such other location in as the Company may designate by notice hereunder to the City from time to time. A copy of each communication covered by the immediately preceding sentence shall be sent to Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016, Attention: Kevin E. Fullington, Esq. Every communication from the Company must be sent to the individual, agency or department designated in the applicable Section of this Agreement, unless it is to "the City," or to "DoITT" in which case such communication must be sent to DoITT at 255 Greenwich Street, Ninth Floor, New York, New York 10007 Attention: General Counsel or to such other location in New York City as the City may designate by notice hereunder to the Company from time to time. A required copy of each communication from the Company must be sent to New York City Law Department, 100 Church Street, New York, New York 10007, Attention: Chief, Economic Development Division, or to such other location in New York City as the City may designate by notice hereunder to the Company from time to time. Except as otherwise provided herein, the mailing of such notice, direction, or order is equivalent to direct personal notice and will be deemed to have been given when received.

10.5 General Representations, Warranties and Covenants.

(a) In addition to the representations, warranties, and covenants of the Company to the City set forth elsewhere herein, the Company represents and warrants to the City and covenants and agrees (which representations, warranties, covenants and agreements will not be affected or waived by any inspection or examination made by or on behalf of the City), that, as of the Effective Date:

(i) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly authorized to do business in the State of New York. The Company has all requisite power and authority to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby. Certified copies of the Company's organizational and governing documents, as amended to date, have been delivered to the Commissioner, and are complete and correct. The description of the ownership of the Company in Appendix D attached hereto is accurate and complete as of the Effective Date.

(ii) The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the Company has furnished the City with a certified copy of authorizations for the execution and delivery of this Agreement. This Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery by the Company and the City will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms (provided, however, that such warranty and covenant by the Company will not constitute a waiver of any right, claim or matter that is not waivable by the Company under federal law). The Company has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(iii) No material misrepresentation has been made, either oral or written, intentionally or negligently, by or on behalf of the Company in this Agreement, or in connection with any submission to the City in connection with the Company's request for the franchise granted hereunder or the preparation of this Agreement.

10.6 Additional Covenants.

10.6.1 In order to assure that the Inalienable Property and the use by the public thereof is adequately protected, the Company agrees that it will, prior to any construction, operation, maintenance, upgrade, repair or removal of the System in the Inalienable Property, secure all necessary permits, licenses and authorizations in connection with the construction, operation, maintenance, upgrade, repair or removal of the System, or any part thereof. The Company will not permit to occur, or will promptly take corrective action if any event does occur, that could result in the revocation or termination of any such permit, license or authorization or, after notice or lapse of time or both, would permit revocation or termination of any such permit, license or authorization.

10.6.2 In order to assure that the Company is able to comply with the lawful terms of this Agreement, the Company will (a) preserve and maintain its existence, its business, and all of its rights and privileges necessary or desirable in the normal operation of the System in the Inalienable Property and (b) maintain its good standing in its state of organization and continue to qualify to do business and remain in good standing in the State of New York.

10.6.3 All of the properties, assets and equipment used as part of the System will be maintained at a level of good repair, working order and good condition that is necessary to assure the safety and protection of the Inalienable Property and the safe and efficient use of said Inalienable Property.

10.7 Binding Effect. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted transferees and assigns. All of the provisions of this Agreement will apply to the Company, its successors, and assigns.

10.8 Rights Upon Termination.

(a) Upon the termination of this Agreement, whether at its scheduled expiration or otherwise, the Company shall at the City's election (i) remove the System located on, over or under the Inalienable Property at the Company's own cost and expense, pursuant to subsection (e) hereof, and/or (ii) sell to the City or to the City's designee the portions of the System within the Inalienable Property (subject to the continuing right of the Company, on terms to be negotiated between the City and the company each acting in good faith, to use the System to support operations outside New York City).

(b) The price to be paid to the Company upon an acquisition pursuant to the preceding subsection (a) will be the fair value of the System within the Inalienable Property, with no value allocable to the terminated or expired franchise itself, which price (as determined by the appraisal procedure as described hereafter in this subsection (b)) will be the fair value as that term is used in Section 363(h)(5) of the City Charter, as it may be amended, or under any successor provision. Subject to the limitations found in the next sentence, to the extent the City effects an acquisition pursuant to clause (ii) of Section 10.8(a) above herein and within one year thereafter sells that portion of the System acquired to a third party, and the amount received by the City from such sale exceeds the price paid by the City to the Company pursuant to this Section 10.8, the City will pay such excess amount to the Company after deducting all reasonable expenses incurred by the City in connection with such acquisition, interim operation and sale. The preceding sentence will apply only in cases where the Agreement has not terminated by reason of termination for breach or default of this Agreement by the Company. The date of valuation for purposes of setting the price referred to in the first sentence of this subsection (b) will be the date of termination of the Agreement. For the purpose of determining such valuation, the parties will select a mutually agreeable independent appraiser to compute the purchase price in accordance with industry practice and the aforementioned standards. If they cannot agree on an appraiser in ten (10) days, the parties will seek an appraiser from the American Arbitration Association. The parties will instruct the appraiser to make the appraisal as expeditiously as possible, but in no more than sixty (60) days and to submit to both parties a written appraisal. The Company will provide the appraiser with access to the Company's books

and records as necessary to make the appraisal. Notwithstanding anything to the contrary in this Agreement, the parties will share equally the costs and expenses of the appraiser.

(c) The City will notify the Company, within thirty (30) days after receipt of the appraisal described in the preceding subsection (b) of this Section 10.8, of its election pursuant to subsection (a) above of this Section 10.8. If it elects to make the purchase permitted under (a)(ii) above, the City will purchase the same at a closing to occur within a reasonable time (not to exceed twelve months) after its election. The Company agrees, at the request of the City, to continue to provide service to its then-existing customers to the extent required by any applicable FCC or PSC rules regarding termination or continuity of service and, to the extent not inconsistent with such rules, (i) to operate the System within the Inalienable Property pursuant to the provisions of this Agreement for a period of up to twelve (12) months after the termination of this Agreement, until the City either elects not to purchase any portion of the System within the Inalienable Property, or closes on such a purchase, or (ii) to cease all construction and operational activities affecting the portion of the System to be purchased in a prompt and workmanlike manner,.

(d) In the event of any acquisition by the City or the City's designee pursuant to this Section 10.8 hereof, the Company shall:

(i) cooperate with the City to effectuate an orderly transfer of all necessary or appropriate records and information concerning the assets to be transferred to the City;

(ii) promptly execute all appropriate documents to transfer to the City, subject to any liabilities, title to the assets being transferred as well as any lawfully assignable contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain and operate such assets, as appropriate; provided, that such transfers will be made subject to the rights, under Article 9 of the Uniform Commercial Code as in effect in the State of New York and, to the extent that any collateral consists of real property, under the New York Real Property Law, of banking or any other lending institutions which are secured creditors or mortgagees of the Company at the time of such transfers; and provided, that, with respect to such creditors or mortgagees, the City will have no obligation following said transfers to pay, pledge, or otherwise commit in any way any general or any other revenues or funds of the City, other than the gross operating revenues received by the City from its operation of the assets purchased, in order to repay any amounts outstanding on any debts secured by such assets which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the gross operating revenues received by the City from its operation of the such purchased assets, may in no event exceed the lesser of: (i) the fair market value of such assets on the date of the transfer of title to the City or (ii) the outstanding debt owed to such creditors and mortgagees on said date (nothing in this Section 10.8 may be construed to limit the rights of any such secured creditors to exercise its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments); and

(iii) promptly supply the City with all necessary records (i) to reflect the City's ownership of the System within the Inalienable Property; and (ii) to operate and maintain the System within the Inalienable Property including, without limitation, plant and equipment layout documents.

(e) In the event of an election by the City of the alternative set forth in clause (i) of subsection (a)(i) of this Section 10.8 upon any termination of this Agreement, the City may, but will not be obligated to, direct the Company to remove, at the Company's sole cost and expense, all, or any portion designated by the City, of the System from the Inalienable Property in accordance with all applicable requirements of the City and subject to the following:

(i) this provision will not apply to any portion of the System (whether buried or unburied) which, in the reasonable and informed judgment of the City, either (a) cannot be removed without undue adverse effect on the public or (b) would result in the Company incurring removal costs and expenses that are in excess of or otherwise disproportionate to any public benefit or use of the Inalienable Property reasonably expected by the City to be derived from the removal of such portion of the System;

(ii) in removing System facilities and equipment from the Inalienable Property the Company shall refill and compact, at its own cost and expense, any excavation that it makes and shall leave, in all material aspects, all Inalienable Property and other property in as good condition as that prevailing prior to the Company's removal of the System from the Inalienable Property and without affecting, altering or disturbing in any way any electric, telephone or other cables, wires, structures or attachments owned by the City or any Person other than the Company;

(iii) the City will have the right to inspect and approve the condition of such Inalienable Property after removal and, to the extent that the City reasonably determines that said Inalienable Property has not been left in materially as good condition as that prevailing prior to the Company's removal of the System therefrom, the Company will be liable to the City for the cost of restoring the Inalienable Property and other property to said condition;

(iv) the Security Fund, liability insurance and indemnity provisions of this Agreement will remain in full force and effect during the entire period of removal and associated repair of all affected Inalienable Property, and for not less than one hundred twenty (120) days after final completion thereof; and

(v) removal must be commenced within thirty (30) days of the removal order by the City and must be substantially completed within twelve (12) months thereafter including all reasonably associated repair of the Inalienable Property.

(f) If, in the reasonable judgment of the Commissioner, the Company fails to commence removal of the System from the Inalienable Property as designated by DoITT, within thirty (30) days after DoITT's removal order, or if the Company fails to substantially complete such removal, including all associated repair of the Inalienable Property, within twelve (12)

months thereafter, then, to the extent not inconsistent with applicable law, the City will have the right to either:

(i) remove all or part of the System located within the Inalienable Property at the Company's cost and expense, such removal to be performed by City personnel or, at the City's option, by another Person; or at the City's option

(ii) take ownership of any portion of the Company's System within the Inalienable Property designated by the City for removal and not timely removed by the Company, which portion will belong to and become the property of the City without payment to the Company (notwithstanding the provisions of subsections (a)(ii), (b), (c) and (d) of this Section 10.8) and the Company shall execute and deliver such documents, as the Commissioner requests, in form and substance acceptable to the Commissioner, to evidence such ownership by the City (although failure by the Company to execute and/or deliver such documents will not limit, compromise or affect the City's ownership of the applicable facilities).

(g) None of the decisions, directions or actions of the City pursuant to this Section 10.8 will constitute a condemnation by the City or a sale or dedication under threat or in lieu of condemnation.

(h) Upon the later of the date one hundred and twenty (120) days after the termination of this Agreement for any reason or the date of the completion of removal of the System from and associated repair of the Inalienable Property pursuant to this Section 10.8 (or in the case of portions of the System that are, pursuant to a City decision under this Section 10.8, not being removed from the Inalienable Property, the date on which the Company delivers documentation confirming transfer of such portion of the System to the City), the Company will be entitled to the return of the Security Fund deposited pursuant to Section 5 hereof, or such portion thereof as remains on deposit with the City at said termination, provided that all offsets necessary (i) to reflect any withdrawals by the City from the Security Fund permitted pursuant to this Agreement, (ii) to cover any costs, loss or damage incurred by the City as a result of any Event of Default, and (iii) to reimburse the City for any and all costs and expenses incurred by the City related to removal of the System from the Inalienable Property pursuant to this Section 10.

(i) The City and the Company shall negotiate in good faith all other terms and conditions of any acquisition or transfer of the System located within the Inalienable Property, except that the Company hereby waives its rights (to the fullest extent such rights are lawfully waivable), if any, to relocation costs arising out of the termination of this Agreement pursuant to this Section 10.8 that may be provided by law and except that, in the event of any acquisition of the System within the Inalienable Property by the City: (i) the City will not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by the Company or any other obligations of the Company or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System acquired by it in any manner.

10.9 No Waiver; Cumulative Remedies. No failure on the part of the City to exercise, and no delay in exercising, any right hereunder may operate as a waiver thereof, nor will any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement will impair any of the rights of the City under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by the City at any one time will not affect the exercise of such right or remedy or any other right or other remedy by the City at any other time. In order for any waiver of the City to be effective, it must be in writing. The failure of the City to take any action regarding a breach or default of this Agreement or an Event of Default hereunder by the Company shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the City to take any action permitted by this Agreement at any other time regarding such breach, default or Event of Default which has not been cured, or with respect to any other breach, default or Event of Default by the Company.

10.10 Partial Invalidity. Except as expressly set forth otherwise in this Agreement, if any Section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid or unenforceable, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, then the party which had been the beneficiary of such invalidated portion will have the right (except as may be limited by law), at its option, to terminate this Agreement (as if the scheduled expiration of the Term had occurred pursuant to Section 2.1 hereof) and invoke the termination provisions hereof as set forth in Sections 2.3.2 and 10.8 hereof, except that if the other party waives such invalidity and continues to comply voluntarily with such invalidated portion then so long as such voluntary compliance continues the right to terminate described in this Section 10.10 shall not apply. To the extent this Section 10.10 is itself determined to be inconsistent with law, it shall be deemed to be narrowed in its scope to the extent necessary to render it lawful.

10.11 Headings. The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and will not in any way affect the construction or interpretation hereof. Terms such as “hereby,” “herein,” “hereof,” “hereinafter,” “hereunder,” and “hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The terms “shall” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

10.12 No Agency. The Company shall conduct any work to be performed pursuant to this Agreement as an independent contractor and not as an agent of the City.

10.13 Governing Law. This Agreement will be deemed to be executed in the City of New York and State of New York, and to be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, as applicable to contracts entered into and to be performed entirely within that State.

10.14 Survival of Representations and Warranties. All representations and warranties contained in this Agreement will survive the end of the Term.

10.15 Delegation of City Rights. The City reserves the right to delegate and redelegate, from time to time and to the extent permitted by law, any of its rights or obligations under this Agreement to any governmental body or organization, or official of any other governmental body or organization, and to revoke any such delegation or redelegation. Any such delegation or redelegation by the City will be effective upon written notice by the City to the Company of such delegation or redelegation. Upon receipt of such notice by the Company, the Company will be bound by all terms and conditions of the delegation or redelegation not in conflict with this Agreement. Any such delegation, revocation or redelegation, no matter how often made, will not be deemed an amendment to this Agreement or require the Company's consent.

10.16 Claims Under Agreement. The City and the Company agree and intend that, except to the extent such agreement would be impermissible under applicable law, any and all claims asserted by or against the City arising under this Agreement or related thereto will be heard and determined either in a court of the United States ("Federal Court") located in New York City or in a court of the State of New York ("New York State Court") located in the City and County of New York. To effect this agreement and intent, the Company agrees that:

(a) If the City initiates any action against the Company in Federal Court or in New York State Court, service of process may be made on the Company as provided in Section 10.18 hereof;

(b) With respect to any action between the City and the Company in New York State Court, the Company hereby expressly waives and relinquishes any rights it might otherwise have (i) to move or dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court outside of the City of New York; and (iii) to move for a change of venue to a court of the State of New York outside New York County;

(c) With respect to any action between the City and the Company in Federal Court, the Company expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York; and

(d) If the Company commences any action against the City in a court located other than in the City and State of New York, then, upon request of the City, the Company shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Company shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City of New York. When the Company either gives such consent or dismisses such action, to allow for such reinstatement, the City agrees, where it is able, to waive any statute of limitation, provided the Company has brought such action at least three (3) months prior to the expiration of the statute of limitation and has provided the City with notice pursuant to this Agreement.

10.17 Modification. Except as otherwise provided in this Agreement, any Appendix to this Agreement or applicable law, no provision of this Agreement nor any Appendix to this

Agreement may be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the City and the Company, and approved as required by applicable law.

10.18 Service of Process. Process may be served on the Company either in person, wherever the Company may be found, or by registered mail addressed to the Company at its office in the City, or as set forth in Section 10.4 of this Agreement, or to such other location as the Company may provide to the City in writing, or to the Secretary of State of the State of New York.

10.19 Matching Provision. In the event that the City, after the date that this Agreement has been fully executed, enters into a binding, written franchise agreement granting a franchisee other than the Company authority to use the Inalienable Property to provide facilities and services in a manner comparable to that authorized hereunder, and such franchise agreement contains provisions imposing lesser obligations on the franchisee thereunder than are imposed by the provisions of this Agreement, then the Company may petition DoITT for a reduction in its obligations hereunder, which petition DoITT will not unreasonably delay or deny if DoITT, acting reasonably, determines

(i) that the reduction in obligations sought by the Company must be granted in order to ensure fair and equal treatment between the Company and the other franchisee, and

(ii) that the Company is in compliance with this its obligations under this Agreement, and

(iii) that the obligations imposed on the Company under this Agreement, taken as a whole, place the Company at a substantial competitive disadvantage in relation to the obligations imposed on the other franchisee, and

(iv) that the reason for the City's imposition of lesser obligations on the other franchisee are not the result of the differing nature of the City's legal authority with respect to such other franchisee or its activities, and

(v) that the City's imposition lesser obligations on the other franchisee are not justified by other benefits to the City or its citizens that are being received in connection with such other franchisee's services and are not being received in connection with the Company's services.

The City shall promptly provide the Company with a copy of each franchise agreement covered by this Section 10.19 which is not otherwise publicly available.

10.20 Further Assurances. Upon the written request of either party, the other party shall do, execute, acknowledge and deliver, at the cost and expenses of the requesting party, such further acts, deeds, conveyances and assurances as the requesting party may reasonably require in order to better assure, convey, grant, assign, transfer and confirm upon the requesting party the rights intended to be granted under this Agreement, provided that this paragraph is not intended to require any party to grant any additional substantive rights to the other party but only to provide such formal confirmation, as the requesting party may reasonably require, of the substantive rights granted hereunder .

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Execution Date.

THE CITY OF NEW YORK

By: _____
Deputy Mayor

By: _____
Department of Information Technology and
Telecommunications

Approved as to form and certified as to legal authority:

Acting Corporation Counsel

PHOENIX FIBER NETWORK, LLC

By: _____

City Clerk

State of New York)
)ss.:
County of _____)

On the __ day of _____, 2015, before me personally came [PRINCIPAL], to me known, who, being by me duly sworn, did depose and say that he is Managing Member of PHOENIX FIBER NETWORK, LLC, the entity described in and which executed the above instrument; and that he/she signed his/her name thereto in his/her capacity as Managing Member of PHOENIX FIBER NETWORK, LLC, authorized to thus execute said instrument.

Notary Public

State of New York)
)ss.:
County of New York)

On the __ day of _____, 2015, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she is Deputy Mayor of the City of New York, the entity described in and which executed the above instrument; and that he/she signed his/her name thereto in his/her capacity as Deputy Mayor of the City of New York authorized to thus execute said instrument.

Notary Public

State of New York)
)ss.:
County of New York)

On the __ day of _____, 2015, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he/she is _____ of the Department of Information Technology and Telecommunications of the City of New York, the entity described in and which executed the above instrument; and that he/she signed his/her name thereto in such capacity being authorized to thus execute said instrument on behalf of the City of New York.

Notary Public

APPENDIX A

CONSTRUCTION TERMS

A. Location of Cable

1. In order to assure efficient management and use of the City's public rights-of-way, the Company shall install all cables and other equipment located within the Inalienable Property in a manner consistent with existing telephone or public utility lines, which general requirement will include, without limitation, the following specific obligations:

(a) If and when the Company seeks to install cables and related equipment in an area of the City in which lines within the Inalienable Property are installed within the duct and conduit facilities of Empire City Subway Company, Ltd. (ECS) or Consolidated Edison Company of New York Inc. (CECONY), or their successors, the Company shall install its cables and related equipment that are to be located within the Inalienable Property within the duct and conduit facilities of ECS or CECONY (and if no space is available within the facilities of ECS or CECONY, the Company shall apply to either ECS or CECONY for construction of new facilities necessary to support the Company's installation). The selection of which entity to use, ECS or CECONY, will be at the Company's discretion wherever a choice is available. If the City's contractual arrangements with ECS and CECONY as they exist as of the Effective Date should change in a material manner or be replaced during the term of this franchise, the terms of this subsection (a) will be deemed adjusted to reflect such reasonable new arrangements regarding management and use of common duct and conduit facilities as may be adopted by the City.

(b) In any area of the City where existing landline communications cables within the Inalienable Property are located underground, the Company shall install its cable and related facilities underground, except as otherwise provided in this Agreement or as otherwise approved by the agencies of the City having jurisdiction over such matters (it is understood that among other conditions that an agency of the City may place on the granting of any such approval may be, to the fullest extent permitted by law, a requirement of additional compensation for use of the Inalienable Property in addition to and not in lieu of that contemplated in Section 3 of this Agreement, which Section 3 compensation is only intended to cover compensation for use of the Inalienable Property in a manner that does not require such additional approval).

2. Whenever possible, the Company shall, in order to minimize the burden on the public rights-of-way, install its cables and other equipment (not otherwise covered by Section 1(a) above of this Appendix) using existing telephone or utility (as that term is defined in 47 USC § 224 in effect as of the Effective Date) ducts, conduits, poles or similar facilities. If and when space for the Company to install its cables and related equipment using such existing ducts, conduits, poles or similar facilities cannot be obtained, the Company may install its own such facilities, provided that:

(a) The Company shall first obtain all necessary permits from the City's Department of Transportation and/or other applicable City agencies, including, without limitation, with respect to additional above ground poles or similar facilities, possible land use review pursuant to Department of City Planning requirements and possible requirement of additional compensation in a manner comparable to that referred to in the parenthetical in Section 1(b) above of this Appendix (in addition, prior to applying for any such permit, the Company must submit to DoITT for DoITT's approval, and receive DoITT's approval of, a plan indicating all anticipated requests for permits to be made pursuant to this provision, which plan may be updated from time to time by submission and approval of an updated plan);

(b) all above-ground facilities will be maintained in accordance with such maintenance standards applicable to such facilities as are or may hereafter be established by the City .

3. In the event of any inconsistency between this Appendix A and applicable provisions of the New York City Administrative Code or rules of the New York City Department of Transportation (the "Department of Transportation"), or other rules of the City, such provisions and rules will prevail.

4. Notwithstanding any provisions to the contrary set forth in this Appendix A or in this Agreement, the Company will be authorized pursuant to this Agreement to install, operate and/or maintain equipment pedestal boxes above ground on the surface of City sidewalks *only* if (a) the Company abides by the requirements of Attachment 1 attached to and made a part of this Appendix A and the Agreement and (b) such boxes are used to provide Cable Television Service pursuant to a Cable Television Franchise and/or to provide residential switched telephone service connecting to the public switched telephone network, and (c) such boxes are not located in those portions of the City in which Empire City Subway, Ltd. is required by contract with the City to construct and maintain conduits for communications lines.

B. Additional Construction Terms

1. The Company shall comply with all applicable federal, state and City laws, rules, codes, and other requirements, in connection with the construction, repair, upgrade and maintenance of the System within the Inalienable Property of the City, now or hereafter in effect, provided such are lawful and not preempted.

2. The installation of all cables, wires, or other component parts of the System in or on any structure within the Inalienable Property shall be undertaken in a manner which does not interfere with the operation or use of any existing conduit or preexisting system or facility of any third party.

3. The Company shall comply with, and shall ensure that its subcontractors comply with, all applicable lawful rules, regulations and standards of the Department of Transportation provided such are lawful and not preempted. If the construction, upgrade, repair, maintenance or operation of the System does not comply with such lawful, non-preempted rules, regulations and standards, the Company must, at its sole cost, remove and reinstall such cables,

wires or other component parts of the System to ensure compliance with such rules, regulations and standards.

4. The Company shall comply with requirements as may be adopted from time to time by the City regarding the periodic inspection by the Company of any of its facilities that are located within the Inalienable Property and which are on the surface of the ground or above ground, provided such requirements are reasonable for the purpose of assuring compliance with reasonable safety and esthetic standards for such facilities.

5. (a) The Company shall provide, in a format acceptable to the Commissioner, and to the extent (pursuant to subparagraph (c) below) different from the requirements set forth in subparagraph (b) below, consistent with industry standards, maps and other information detailing the location of the System installed in the streets of the City pursuant to this Agreement.

(b) As of the Effective Date, the following format is acceptable to the Commissioner:

(i) For any installation where the Company initiated a street cut and installed its own duct and cable, wire, fiber optic telecommunications cable or other closed-path transmission medium that may be used in lieu of cable, wire or fiber optic telecommunications cable for the same purposes, all locations of such infrastructure elements must be produced utilizing the City's accurate physical base map (NYCMAP). Company shall also indicate what type of cable, wire, fiber optic telecommunications cable or other closed-path transmission medium that may be used in lieu of cable it is using in each location, including above and below ground locations and for both microtrenching and traditional trenching. The submission must be digital – provided on a CD, DVD or external hard drive and the infrastructure elements depicted must be accurate within two feet vertically and six inches horizontally, to match with the NYCMAP.

(ii) For any installation where the Company used the ducts of a third party, the Company shall use its best efforts to create maps using such specific source information, datapoints and detail as may have been made available to the Company upon the Company's request from the third party owning the underlying facilities where the System is installed.

(iii) The data, both graphical and attribute, must be formatted so that it can be easily read into a database. Line styles and symbols must conform to DoITT standards and all data must be structured according to DoITT specifications. Acceptable formats include, but are not limited to: ESRI shapefiles (preferred) and drawing interchange file.

(c) Upon written notice to the Company, the Commissioner may reasonably change the format requirements described in (b) above. Annually, simultaneously with the first payment due during each calendar year pursuant to Section 3.3.2, the Company shall submit to DoITT a certification representing that the most recently submitted mapping information submitted pursuant to this Section 5 of this Appendix A is accurate and current as a description of the System installed in the streets of the City pursuant to this Agreement and including a statement of the Company's calculation of its Installation Area as defined in Section 3.2.3 of this Agreement, such calculation to include a level of detail reasonably satisfactory to the City. Such

certification shall be signed by a licensed professional engineer, except that if the compensation due pursuant to Section 3.2 of this agreement with respect to any calendar year is less than the product of \$280,000 multiplied by the CPI Adjustment the annual certification to be made during the following calendar year may, at the option of the Company, be signed by the chief executive officer of the Company (or if there is no chief executive officer, the individual of equivalent responsibility in the Company) in lieu of a professional engineer. The Company shall submit to DoITT updates of the mapping information described in this Section 5 of this Appendix A promptly upon the completion of construction of each addition or change to the System which results in a change in the Installation Area as defined in Section 3.2.3 of this Agreement, which update shall include a calculation of the resulting changes in the Company's Installation Area and the dates such changes became effective, such calculation to include a level of detail reasonably satisfactory to the City

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ATTACHMENT 1 TO APPENDIX A

STANDARDS FOR ON-STREET TELECOMMUNICATIONS PEDESTAL STRUCTURES

1. APPLICABILITY

The standards described in this Attachment 1 shall apply, unless and until revised as described in Section 10 of this Attachment 1, to all “On-Street Pedestal Structures” (hereinafter referred to as “Pedestal Structures”), for which sidewalk opening permits are granted by the Department of Transportation (DOT) after November 13, 2000, defined as any communication utility box and related construction, such as foundations and bollards, which are located, in whole or in part, above grade and within the right-of-way of a public street, except when such box is located on a pole.

2. LOCATION STANDARDS

a. Clearance

- i. Corner Clearance Policy: Pedestal Structures shall comply with Executive Order #22 of April 13, 1995, plus an additional ten feet clearance; that is, there shall be a minimum distance of 20 feet between the “corner,” as defined in Executive Order #22 (attached) or any superseding Executive Orders, and any Pedestal Structure.
- ii. The edge of any Pedestal Structure nearest the curb shall be a minimum of 18 inches and a maximum of 24 inches from the curb.
- iii. A minimum clear path of 8 feet or one-half the width of the sidewalk width, whichever is less, shall be maintained. However, in no case shall the minimum clear path be less than 4 feet.
- iv. Minimum Distance between Pedestal Structures and Other Street Furniture: Varies depending on adjoining furniture; see attached Table 1.

b. Required Distance from other Pedestal Structures

- i. A minimum distance of 100 feet shall be maintained between any two Pedestal Structures, regardless of ownership, along any block-front; and
- ii. A maximum of three Pedestal Structures shall be permitted on any single block-front.

3. DIMENSIONAL STANDARDS

- a. **Height:** 2 feet-3 inches minimum and 4 feet maximum (excluding supporting base). The maximum height of any base structure, separate from the Pedestal Structure shall be 4 inches.
- b. **Length (dimension parallel to curb):** 6 feet maximum
- c. **Width (dimension perpendicular to curb):** 2 feet-4inches maximum
- d. **Area:**
 - i. Pedestal Structures greater than 3 feet in height shall have a maximum area as follows:
 - (1) 7 square feet if the width is less than or equal to 18 inches;
 - (2) 4.25 square feet if the width is greater than 18 inches
 - ii. Pedestal Structures less than or equal to 3 feet in height shall have a maximum area of 14 square feet.

4. GENERAL DESIGN STANDARDS

- a. All Pedestal Structures shall be constructed of steel or similar durable, vandal resistant materials.
- b. Materials shall have a low degree of light reflectivity.
- c. Pedestal Structures shall have no sharp edges or protuberances.
- d. Advertising Prohibited: No advertising shall appear on any Pedestal Structure.
- e. Identifying Information: Each Pedestal Structure shall have the following information permanently displayed on its surface.
 - i. Name of the telecommunications service provider; and
 - ii. The name, address and phone number of the telecommunications service provider contact for complaints regarding the pedestal Structure and a statement that the structure is subject to City jurisdiction and that complaints may be made by calling 311.

The required information shall be placed in an easily visible location facing the pedestrian pathway and appear in clearly legible letters a minimum of ½ inch in height. The logo of the telecommunications service provider may be included with the required information provided that the maximum coverage of all such information, including the logo, shall not exceed 48 square inches.

5. COMPANY MANAGEMENT STATEMENT

The following information shall be provided to the New York City Department of Information Technology and Telecommunications (DoITT) with respect to a proposed on-street Pedestal Structure:

- a. Description of potential off-street and pole-mounted locations and reason(s) for their rejection.
- b. The address and owner(s) name(s) where the telecommunications service provider has been refused off-street access to install equipment to be placed in the Pedestal Structure;
- c. Description of alternate on-street locations which are consistent with these standards and reason(s) for their rejection;
- d. When the telecommunications service provider is utilizing more than one size Pedestal Structure within the City, explanation of the technical and/or engineering requirements for proposal to install other than the smallest Pedestal Box in current use by the provider; and
- e. Where the proposed on-street location is determined to be unsatisfactory DoITT may require additional information as to the actions taken pursuant to sections (a), (b) and (c) above as well as to require consideration of additional off-street locations or the installation of a pole-mounted structure.

6. COMPANY ENGINEERING PLANS: SUBMISSION REQUIREMENTS

Concurrent with submission of the Company Management Statement, drawings showing the following information shall be provided to DoITT:

- a. Exact location and size of the proposed Pedestal Structure;
- b. Placement and distance of nearest Pedestal Structures;
- c. Placement and distance of other street furniture at and adjoining the proposed location;
- d. Number and location of homes served by the equipment to be installed in the proposed Pedestal Structure;
- e. List of the electronics to be placed in the Pedestal Structure; and
- f. A completed DOT permit form for sidewalk opening.

7. CITY AGENCY APPROVAL

- a. DoITT: documentary and on-site review.

- b. Landmarks Preservation Commission approval, as necessary for Pedestal Structures to be located in historic districts
- c. DOT (following DoITT sign-off): review and issuance of sidewalk opening permit.

8. MAINTENANCE

Pedestal Structures, including any supporting base, shall be maintained in accordance with the following:

- a. Any individual Pedestal Structure reported to a telecommunications service provider contact for complaints (identified pursuant to section 4(e)(ii) above) as having graffiti or stickers shall be cleaned within 5 working days;
- b. The telecommunications service provider shall establish a regular 30 day cleaning cycle, or such other schedule as may be acceptable to DoITT, to ensure that the Pedestal Structure is maintained in a clean condition, free of litter, rust, debris, stickers, graffiti and grime; and
- c. The quarterly preventive maintenance report to DoITT must include certification that all Pedestal Structures were cleaned in accordance with the regular cleaning cycle, as well as a log showing dates of receipt of complaints with regard to individual Pedestal Structures and date of response.

9. WAIVER

The Commissioner of DoITT may, in his or her sole discretion waive or modify these standards in specific cases when 1) compliance with the standards is impossible or impracticable, and precludes the petitioner from providing its standard telecommunications services and 2) when, in the Commissioner’s sole opinion, the public health, safety and general welfare will not be endangered thereby. The petitioner shall request such waiver in writing and shall provide any information requested by DoITT, which may assist the Commissioner in his or her determination.

10. REVISION OF STANDARDS

The standards set forth in Sections 2, 3 and 4, and Table 1, of this Attachment 1 shall be subject to revision by the City’s Department of City Planning (“DCP”) as follows, and to the extent such standards are thus revised, the Company shall thereafter be subject to such revised standards as if they had been expressly set forth herein: DCP may adopt such revised standards provided such revised standards (i) reflect streetscape and urban design considerations, (ii) are arrived at after the Company is given 30 days notice and opportunity to comment in person and in writing and such comments, including any comments with respect to the cost of implementation, are duly considered, (iii) are consistent with the ability of the Company to provide the services authorized by the

Franchise Agreement of which this Attachment is a part, and (iv) do not limit the continued operation and maintenance of facilities installed pursuant to a franchise agreement, if any, previously executed by the City and the Company (“maintenance” as that term is used in this clause (iv) is understood to include, without limitation, replacement in kind of individual units as they are damaged or malfunction or otherwise reach the end of their useful life).

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TABLE 1:

Minimum Distances between Street Furniture (from DOT Revocable Consents)

Street Furniture	Minimum Clearance (feet)
Subway Entrance (open side)	15
Sidewalk Cafes	15
Newsstand	15
Bus Stop (with/without shelter)	15
Fire Hydrant/Standpipe	10
Driveway	10
Bicycle Rack (including bicycles)	8
Street Tree	5
Bench	5
Principal Building Entrance	5
Ramp intended to provide access for people with disabilities	5
Subway Entrance (closed end or side)	5
Public Telephone	5
Planters on the sidewalk not adjacent to the building façade	5
Mail Box	4
Street Lights	4
Parking Meters	4
Edge of Tree Pit	3
Street Signs	3
Utility Hole Covers, Cellar Doors, Areaways	3
Transformer Vault ¹ , Sidewalk Grates	3
All Other Legal Street Furniture	5

¹ This restriction does not apply to vaults owned by the Company or its affiliates.

APPENDIX B

IN-KIND COMPENSATION

The Company will provide the City, for the City's use, with ten percent (10%) of the capacity of the backbone of the Company's fiber optic network, but in no event more than six (6) fiber strands within such backbone. Franchisee also shall provide the City with additional capacity, equivalent to two (2) fiber strands in addition to the six (6) fiber strands, where the backbone consists of more than 80 strands of fiber. (The term "backbone" as used in this Appendix B will mean any portion of Franchisee's fiber optic network that contains twenty-four (24) or more fiber strands.

The fiber strands provided to the City in accordance with this Appendix B must be of the same type, quality and capacity standard as the other fiber strands installed. In the event of the use of a technology other than fiber optic strands, reasonably equivalent in-kind compensation will be provided to the City. The fiber strands provided to the City as in-kind compensation hereunder will be owned by the City and the City will hold title to such strands, which title must be free of encumbrance by actions of the Company. Upon termination of this Agreement, the City's title to such strands will remain in effect, except that if the City directs the removal of all or part of the Company's facilities from the Inalienable Property after termination under Section 10.8 of this Agreement, then the City's title to such strands will terminate upon the removal by the Company of those cables removed pursuant to such City direction. The Company shall, as part of its in-kind compensation to the City for use of the public right-of-way maintain and keep in good repair (or provide for the maintenance and good repair of) the fiber strands set aside for the City hereunder to the same standard as it applies to strands used by the Company's customers or by the Company to provide service to its customers. The parties agree that it is not the intention of this Exhibit B to require the Company to provide "drops" (i.e., electronics and internal wiring located within or serving particular buildings) to the City, although the Company acknowledges that as a necessary element of its obligation to make the capacity described above available to the City as described herein, the Company will provide at no charge reasonable access and assistance as needed to allow the City to connect the City's facilities and equipment to the fiber strands being provided.

Notwithstanding anything to the contrary in the preceding two paragraphs or this Agreement, to the extent that the Company is providing the in-kind compensation described in the first two paragraphs of Appendix B of the Information Services Franchise held by the Company, and the fiber capacity thus provided to the City is located within the facilities also being used to provide services under this Agreement, such provision of fiber capacity shall be a credit against the fiber capacity required hereunder.

APPENDIX C

STANDARD CITY CONTRACT PROVISIONS

The following standard City contract provisions are applicable to this Agreement and thus absent any state or federal law to the contrary shall be binding on the Company. However, to the extent it is determined by a court of competent jurisdiction and after all appeals have been exhausted that any one or more such provisions are beyond the City's authority to enforce or to require in the context of this Agreement, then each such provision that is the subject of such a determination shall be treated, as the case may be, as either unenforceable or as excised from this Agreement and not applicable hereunder. All the provisions set forth in this Appendix C are intended to be severable, and thus any such unenforceability or excision and nonapplicability as described in the preceding sentence shall (notwithstanding anything to the contrary stated within such provisions) not result in the termination of this Agreement generally or of any provisions of this Agreement that remain enforceable or that are not thus excised and rendered nonapplicable.

A. INVESTIGATIONS CLAUSE

1.1 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry 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 the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

1.2 (a) If 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 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 concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

1.2 (b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in a 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 concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

1.3 (a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license 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.

1.3 (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 any contract, lease, permit, or license pending the final determination pursuant to paragraph 1.5 below without the City incurring any penalty or damages for delay or otherwise.

1.4 The penalties which 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 for 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 any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have 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.

1.5 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 which may be relevant and appropriate:

- (a) The party's 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 a unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 1.4 above, provided that the party or entity has given actual notice to the commissioner or at the hearing called for in 1.3(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.

1.6 (a) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(b) The term “person” as used in this Section A. of Appendix C 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 receive 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.

1.7 In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or things of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

B. MACBRIDE PRINCIPLES PROVISIONS

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 workplace 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, or for construction involving an amount greater than fifteen thousand dollars, 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 and any individual or legal entity in

which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination 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 the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five 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 of the City Council 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 functions 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 a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent 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 their compliance with such principles.

PART B

For purposes of this section, the following term shall have the following meaning:

“MacBride Principles” shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require 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 workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;

- (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 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, unless otherwise expressly set forth herein. 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 its 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 this 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 and remedies the entity has pursuant to this contract or by operation of law.

C. EMPLOYMENT AND PURCHASING

1. Right to Bargain Collectively. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. The Company shall recognize and deal with the representatives duly designated or selected by a majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, and hours of employment or any other terms, conditions or

privileges of employment. The Company shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

2. Local Preference. The Company shall, at its own cost and expense, develop and maintain a plan for the recruitment, education, training and employment of residents of the City, for the opportunities to be created by the construction, operation, marketing and maintenance of the System within the Inalienable Property. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate City agencies responsible for encouraging employment of City residents. Such plan shall be designed so as to ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, the Company. Such plan shall be updated from time to time as the City deems reasonably necessary. The Company shall, throughout the Term, implement such plan, at its own cost and expense, by ensuring, to the maximum feasible extent, the recruitment, education, training, and employment of City residents.

3. City Vendors. To the maximum feasible extent, after taking into account price and quality considerations, the Company shall utilize vendors located in the City in connection with the construction, operation, marketing and maintenance of the System. The Company shall, after taking into account price and quality considerations, in the purchase of comparable materials, equipment, services or supplies of any nature, give effect to a preference for such items which are assembled, manufactured, or otherwise produced, in whole or in part, within the City.

4. Equal Employment Opportunity. The Company agrees to comply with the provisions of Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10 Sections 1-14 of the Rules of the City of New York) and City Administrative Code 6-108 and all rules and regulations promulgated thereunder (collectively, the "EEO Requirements"), as such EEO Requirements may be amended, modified or superseded throughout the Term. Notwithstanding that the EEO Requirements may not apply on their face to the Company based solely on its status as a party to this Agreement, the Company shall comply in all respects with the provisions of such EEO Requirements and successor and replacement laws, orders and regulations adopted following the Effective Date. As required by said Executive Order No. 50, the provisions of Sections 50.30 and 50.31 of the Final Rule implementing said Order are incorporated herein by this reference. The Company agrees to make a reasonable inquiry and to engage in reasonable compliance monitoring efforts with all unions to ensure that all contractors and subcontractors comply with the required contractual language in Paragraph 5 of this Section C. of this Appendix C. The Company shall not contract with and shall discontinue any contract entered into after the Effective Date with any union, contractor or subcontractor that refuses to agree to or fails to comply with the contractual language in said Section 5.

5. Enforcement. The Company shall take steps to ensure that the requirements of the preceding Paragraph 4 are adhered to by each union with which the Company deals, each officer, employee, agent, contractor or subcontractor of the Company, and each Person performing work pursuant to this Agreement with respect to the System for, on behalf of, or at the discretion of, the Company. The requirements of said Paragraph 4 hereof shall apply to every contract relating to the System between the Company and: (i) any union; (ii) any contractor; (iii) any subcontractor; or (iv) any Person with which any of the foregoing Persons has a relationship in connection with any aspect of the System. To comply with the obligations of said Paragraph 4 and this Paragraph 5, the Company shall include, in all contracts described in the foregoing

sentence which are entered into following the Effective Date (which shall include any renewals, amendments and modifications of existing contracts), the following language, stating that such party: “has received a copy of Section C of Appendix B of a certain agreement by and between the City of New York and the Company dated as of [insert Effective Date] pursuant to which the Company agreed to comply with each term, condition and requirement of said Section C, which terms, conditions and requirements are deemed to be incorporated herein by this reference.”

D. ADDITIONAL COVENANTS

Until the termination of this Agreement and the satisfaction in full by the Company of its obligations under this Agreement, the Company agrees that it will comply with the following affirmative covenants, unless the City otherwise consents in writing:

The Company shall comply with: (a) all laws, rules, regulations, orders, writs, decrees and judgments applicable to the System within the Inalienable Property (including, but not limited to, those of the PSC and the FCC and any other federal or state agency or authority of competent jurisdiction); and (b) all local laws and all rules, regulations, orders, or other directives of the City, DoITT, and the Commissioner related to management of the Inalienable Property to the extent lawful and nor preempted.

The Company agrees to comply in all respects with the City’s Vendor Information Exchange System, as the same may be amended from time to time.

APPENDIX D

COMPANY CONTROL AS OF THE EFFECTIVE DATE AND PERMITTED TRANSFERS

Full list of 10% or more direct or indirect interests in the franchise assets as of the Effective Date (hereinafter, the “Approved Interest Holders”):

Michael Collado
Clifford Kane
Michael Dubilier
Paul Pariser
Tempe Holdings LLC
Light Blue LLC
Erleichda Endeavors LLC

Permitted Transfers

1. Any transaction the result of which is that both (1) Control of the Company, the System and the franchise granted hereunder is exercised by one or more of the Approved Interest Holders listed above and (2) no Person other than an Approved Interest Holder holds an interest which gives it Control of the Company, the System or the franchise granted hereunder.
2. Any transfer, directly or indirectly, by any individual Approved Interest Holder of all or any portion of his or her direct or indirect equity interest in the Company, the System and the franchise granted hereunder, outright or in trust, to or for the benefit of the spouse, a sibling, parent or any lineal descendant of such individual Approved Interest Holder or a lineal descendant of a sibling of such individual Approved Interest Holder (each, a “Relative”) or any personal representative, estate or executor under any will of such individual Approved Interest Holder or pursuant to the laws of intestate succession, so long as the final recipient from any personal representative, estate or executor under any will or pursuant to the laws of intestate succession is a Relative of such individual Approved Interest Holder.
3. Any transaction (an “intra-corporate transaction”) in which an interest of one or more entity or entities which is an Approved Interest Holder is transferred to an entity which wholly owns, directly or indirectly, such Approved Interest Holder(s), or an entity which is, directly or indirectly, wholly owned by such Approved Interest Holder(s), or an entity which is, directly or indirectly, under wholly common ownership with such Approved Interest Holder(s).

APPENDIX E

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance, dated _____, is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized official or broker]

[Name and title of authorized official (typewritten)]

Sworn to before me this
____ day of _____, 2015

NOTARY PUBLIC

NOTICE OF PUBLIC HEARING

NOTICE OF A FRANCHISE AND CONCESSION REVIEW COMMITTEE ("FCRC") PUBLIC HEARING to be held on Monday May 11, 2015 commencing at 2:30 PM at 22 Reade Street, Borough of Manhattan on the following items: 1) a proposed information services franchise agreement between the City of New York and Phoenix Fiber Network, LLC; and 2) a proposed telecommunications services franchise agreement between the City of New York and Phoenix Fiber Network, LLC. The proposed franchise agreements authorize the franchisees to install, operate and maintain facilities on, over and under the City's inalienable property to provide, respectively, information services and telecommunications services, each as defined in the respective franchise agreements. The proposed franchise agreements have a term ending June 30, 2021, subject to possible renewal to the fifteenth anniversary of the date the agreements become effective, and provide for compensation to the City to begin at 38 cents per linear foot in Manhattan and 33 cents per linear foot in other boroughs, escalating two cents a quarter thereafter, subject to certain adjustments.

A copy of the proposed franchise agreements may be viewed at The Department of Information Technology and Telecommunications, 2 Metrotech Center, 4th Floor, Brooklyn, New York 11201, commencing April 27, 2015 through May 11, 2015, between the hours of 9:30 AM and 3:30 PM, excluding Saturdays, Sundays and holidays. Hard copies of the proposed franchise agreements may be obtained, by appointment, at a cost of \$.25 per page. All payments shall be made at the time of pickup by check or money order made payable to the New York City Department of Finance. The proposed franchise agreements may also be obtained in PDF form at no cost, by email request. Interested parties should contact Roxanne Chambers at 718-403-6730 or by email at RChambers@doitt.nyc.gov.

NOTE: Individuals requesting sign language interpreters at the public hearing should contact the Mayor's Office of Contract Services, Public Hearing Unit, 253 Broadway, 9th Floor, New York, New York 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING. TDD users should call Verizon relay service.

The Hearing may be cablecast on NYCMedia channels.

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS

SOLICITATION OF PROPOSALS REGARDING FRANCHISES, IN THE CITY OF NEW YORK, AUTHORIZING THE INSTALLATION OF LANDLINE FACILITIES IN THE CITY'S PUBLIC RIGHTS-OF-WAY FOR THE PROVISION OF INFORMATION SERVICES, AS SUCH SERVICES ARE DEFINED BY FEDERAL LAW (AND ADDITIONAL FRANCHISES FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES AS SUCH SERVICES ARE DEFINED BY FEDERAL LAW)

AGENCY CONTACT:

Joseph Grieco
DoITT
2 MetroTech Center, 4th Floor
Brooklyn, NY 11201
Office: (718) 403-6704

E-MAIL: franchiseopportunities@doitt.nyc.gov

RELEASE DATE: April 13, 2015

LM#: 2015-018858

PIN: 8582015FRANCHI

SECTION 1. INTRODUCTION.

(a) Legal and Procedural Background.

Pursuant to Section 363 of the New York City Charter (“the Charter”), the Council of the City of New York (“the Council”) adopted, on August 22, 2013, an authorizing resolution (Resolution No. 1909, attached hereto as “Appendix A”, referred to hereinafter as the “Authorizing Resolution”) authorizing the Department of Information Technology and Telecommunications (“DoITT”) of the City of New York (“the City”) to grant non-exclusive franchises for the provision of services that include the transmission of voice, data, information service and/or video signals, but excluding certain specified services (such as cable television services) as described in Section C. of said Authorizing Resolution. Section 1072 of the Charter grants DoITT the power to, among other things, develop and issue solicitations, such as this solicitation (this “Solicitation”), consistent with applicable City Council authorizing resolutions, such as the Authorizing Resolution. Pursuant to said Charter Section 1072 and the Authorizing Resolution, DoITT hereby issues this Solicitation inviting submissions from any entities desiring franchises which would authorize the use of City public rights-of-way to install landline facilities for the provision of information services (as that term is currently defined in federal law at Title 47 of the U.S. Code in Section 153, subsection (24)), including, without limitation:

(i) entities who hold expired franchises that authorized the use of City public rights-of-way to install and maintain landline facilities for the provision of data, voice and/or similar services, which entities seek to establish a new period

of franchise authority from the City in the form of an information services franchise,

(ii) entities which hold current, unexpired franchises authorizing the use of City public rights-of-way to install and maintain landline facilities for the provision of data, voice and/or similar services, and wish to amend or replace such current franchises with franchises pursuant to this Solicitation, and

(iii) any other entities seeking the right to use of City public rights-of-way to install and maintain landline facilities for the provision of data, voice and/or similar services under franchises consistent with this Solicitation.

Such submissions could, if DoITT finds them adequate, provide the basis to complete the preparation of contractual language articulating full franchise terms, which could then be presented to the public for review and to the City's Franchise and Concession Review Committee ("FCRC") for possible approval.

(b) Generally. In 1984, a major change in the legal and regulatory landscape of the communications industry in the United States took place with the breakup of the national "Bell System" maintained by AT&T and its subsidiaries. Soon thereafter, the City began to receive requests for franchises from entities competing with or seeking to compete with the various progeny entities into which the old AT&T had been divided. Such franchises were sought so as to authorize, pursuant to the City Charter, the franchise holders to install, maintain and operate in the City's public rights-of-way (primarily City streets) facilities and equipment for the purpose of providing services which had been

provided in the U.S., prior to the breakup of the “Bell System”, primarily by AT&T and its subsidiaries.

In a series of franchises that the City issued after 1984, the services provided by franchisees were described in a manner consistent with federal and New York State communications law and practice at the time. However, several legal and technological developments in recent years suggest a different approach to articulating and categorizing the types of communications services that City franchisees are granted the right to install, operate and maintain facilities in City streets to provide. On the federal statutory front, in 1996 a new federal telecommunications law was adopted that included new legal categories for different form of communications services, including a distinction between “information services” and “telecommunications services,” with only the latter being subject to many significant aspects of the new federal law. Among the areas in which the current, applicable federal statutory law treats “information services” and “telecommunications services” differently is the area of federal preemption of state and local authority, which makes the distinction especially relevant to matters which intersect with City authority. On the technological front, the development of the Internet and other innovations in communications and information networks has led to increasing uncertainty as to what types of services fall into the new “information services” category, in contrast to other legal categories, with important implications for how such services would be treated under federal, state and local law.

Indeed, since the 1996 federal statutory changes there has been and continues to be, much judicial and regulatory activity dealing with the issue of the respective scope of “information services” and “telecommunications services.” The Federal Communications Commission (“FCC”) has previously chosen to treat the delivery of Internet service by cable television companies as an “information service” and to treat the delivery of Internet service over digital subscriber line systems the same way. But recently the FCC issued an order¹ classifying “broadband internet access service” as a telecommunications service. As of the date of this solicitation, the order is not yet effective. It is anticipated that the order will be followed by continued judicial and regulatory activity.

Thus, the legal treatment of these services and technologies may remain, to some degree, in flux. The City in this Solicitation seeks to deal with any ongoing uncertainty at the federal level by continuing to offer a format going forward for entities who seek franchises to install landline communications transmission facilities in City rights-of-way (for services other than cable television). Most landline communications systems being built today are based primarily on fiber optic cable systems, built from glass fibers through which light waves are directed in a format that can transmit digital information. Such systems are constructed to provide, or to be capable of providing, the kind of transmissions or services that applicable regulatory decisions treat at least in some capacity as

¹ *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, Released March 12, 2015.

“information services”. This solicitation is therefore issued for the purpose of allowing qualified respondents to obtain franchises expressly permitting the installation, operation and maintenance of facilities in City rights-of-way for the provision of information services-- as defined in federal law. It is DoITT’s goal that, to the extent consistent with applicable law, all operators of landline communications transmission systems installed or to be installed in City streets obtain, if qualified to do so as described in this solicitation, such an “information services” franchise.

Furthermore, any provider applying for an information services franchise hereunder may also seek, in addition to such information services franchise, a second, separate, telecommunications services franchise pursuant to this solicitation. The two types of franchises, respectively covering “information services” and “telecommunications services,” will be treated as separate franchise documents in light of federal law distinctions in the treatment of the two types of service. By obtaining these two separate franchises, the City and franchisees will both be assured that (1) no matter which of the two categories specific services may be placed within, now or in the future, franchisees will hold the authority to provide such services using facilities in City streets and (2) to the extent that federal law affects City authority differently in respect to the two different categories of services, separate franchises will be in effect that can disparately implement City authority as necessary to conform to differences in federal law. Please note that it is not DoITT’s intention that multiple franchises

granted hereunder to the same provider respecting the same physical facilities in City rights-of-way would be required to pay franchise rental compensation twice for use of the rights-of-way. It is DoITT's intention that where two franchises are granted hereunder to the same entity, one for the provision of information services and the second for the provision of telecommunications services, rental compensation payments made by an entity under one such franchise shall, if actually made and if applicable to the same physical facilities, be treated as a credit against the payments due under the entity's other franchise.

(c) Non-Competitive Solicitation; Non-Exclusivity; Other Solicitations May Be Issued. All franchises granted hereunder shall be non-exclusive, as one of DoITT's goals in pursuing this Solicitation is the continued cultivation of a robustly competitive marketplace in the City for the applicable services. Neither the issuance of this Solicitation, nor the ultimate grant of one or more franchises, after approval by the FCRC, pursuant to this Solicitation, will preclude DoITT from issuing in the future one or more further solicitations in connection with possible franchises of the types described herein or preclude the ultimate grant of one or more possible additional franchises of the type described herein (or, for that matter, any other type of franchise) to the extent consistent with law.

SECTION 2. NATURE OF FRANCHISE.

As provided in the Authorizing Resolution, any franchise or franchises granted pursuant to this Solicitation shall be for the provision of one or more of the

services described in Section 1 (a) of this Solicitation and in the Authorizing Resolution, and may include reference to any one or more of the following activities: construction, installation, use, operation and/or maintenance of wire, cable and/or optical fiber and associated equipment on, over and under the inalienable property of the City (including through pipes, conduits and similar improvements thereto) for provision of the applicable services in the City.

Franchises granted pursuant to this Solicitation will not authorize the installation of wireless service antennas, or other wireless transmission and/or reception devices, within the City's public rights-of-way. The City has in the past issued, and may in the future issue, separate solicitations for franchises authorizing such installations, and those responding to this Solicitation (including, without limitation, those who receive a franchise or franchises pursuant to this Solicitation) are not barred from separately seeking franchise authority to install such devices.

SECTION 3. SOLICITATION TIMETABLE AND SUBMISSION PROCEDURE

The release date of this Solicitation is set forth on the cover page of this Solicitation. Submissions in response to this Solicitation may be submitted at any time during the period this Solicitation remains open. Each submission received will be reviewed on its own merits in accordance with the evaluation criteria described in Section 6. Submissions are to be provided in hard copy form (and as further detailed in Section 6(d) below) to the contact person identified on

the cover page of this Solicitation at the address specified on the cover page. It is anticipated (as of the release date of this Solicitation) that this Solicitation will remain open until June 21, 2018, and absent further action by DoITT will remain thus open until June 21, 2018, although DoITT reserves the right to amend, extend or withdraw this Solicitation prior to such date if DoITT finds that circumstances warrant and so long as such amendment, extension or withdrawal would be consistent with state and federal law.

SECTION 4. GENERAL INFORMATION.

(a) Costs Incurred by Proposers. The City shall not be liable for any costs incurred by respondents in the preparation of submissions or for any work performed in connection therewith.

(b) Oral Presentation; Interviews; Additional Information; No Pre-Proposal Conference; Addenda. DoITT may require submitters to give oral or visual presentations in support of their submissions, or to exhibit or otherwise demonstrate the information contained therein. DoITT reserves the right to require the submission of additional information from any submitter. DoITT does not anticipate holding any pre-proposal conference with respect to this Solicitation. Changes to the express terms of this Solicitation will be issued in the form of written Addenda to this Solicitation. Information about how to obtain copies of the Solicitation and any addenda may be found in Attachment 4 attached hereto. Any other communications between a submitter and DoITT shall be subject to the limitations described in Section 6(e) below.

(c) VENDEX; Investigation Provisions; Local Law 34 of 2007; Affirmation.

(i) Respondents to this Solicitation should be aware that respondent(s) will be required to submit original copies of VENDEX Vendor and Principal Questionnaires to the Mayor's Office of Contract Services. In addition, any person or entity with at least a 10% ownership interest in the submitting vendor (including a parent company), is required to complete VENDEX Questionnaires (Principal Questionnaire for any person and Vendor Questionnaire for any entity with at least a 10% ownership interest in the submitting vendor). The franchise award and/or amendment will be subject to completion of the VENDEX questionnaires and review of certain information contained therein by the Department of Investigation.

(ii) Any franchise granted pursuant to this Solicitation will include provisions regarding cooperation with investigations as contemplated by Section 4(b) of Mayoral Executive Order 16 of 1978.

(iii) 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, respondents to this solicitation are required to complete the attached Doing Business Data Form (see Attachment 1) 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.

(iv) No franchise shall be granted pursuant to this Solicitation unless an affirmation substantially in the form attached hereto as Attachment #2 has been executed.

(d) Approval Process. Potential proposers are instructed that DoITT's decision to recommend any entity for a franchise pursuant to this Solicitation shall not constitute the award of a franchise, and that under the City's Charter a franchise can only become effective after approval by the FCRC (which itself may only occur after the public notice and hearing required by Chapter 14 of the City's Charter) and the City's Mayor², and may only be implemented after the City Comptroller registration process described in Section 328 of the City's Charter is completed. DoITT offers no assurance that any submission which it chooses to accept as the basis for moving forward with discussions toward proposed franchise agreement terms and completion of the preparation of contractual language articulating such terms, which could then be presented to

² Such Mayoral approval can be undertaken by an authorized Deputy Mayor.

the public for review and to the FCRC for possible approval, will successfully complete any or all of the steps in such approval process.

(e) Proprietary Information. In the event an entity believes that specific information it must submit to respond fully and completely to this Solicitation is proprietary information that is appropriate and lawful to be treated confidentially by DoITT and/or the City, it may so advise DoITT in writing. DoITT will attempt to treat as confidential any proprietary information that is identified as such by the submitter, consistent with legal requirements. Any information contained in a submission for which the submitter seeks such confidential treatment must be clearly designated with the words "Proprietary Information". Submitters should be aware, in any event, that DoITT 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 a written submission or portion thereof submitted in connection with this Solicitation, even if labeled as proprietary in accordance with this paragraph. In the event that such disclosure of information labeled proprietary is requested by a third party, DoITT will provide notice to the submitter as far in advance as practicable of any deadline for responding to such request and shall consult with the submitter to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL. In the event that DoITT determines that information may not be withheld, DoITT will attempt to provide the submitter with timely notice of its intent to disclose in order that the submitter may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law. The

submitter expressly acknowledges and agrees that neither DoITT nor the City will have any liability to the submitter in the event of disclosure of materials designated by the submitter as “Proprietary Information”.

SECTION 5. CERTAIN FRANCHISE TERMS.

A submitter shall only be eligible to be recommended by DoITT for a franchise pursuant to this Solicitation if in its submission the submitter states that it is willing to enter into agreements that would be consistent with subsections (1) through (18) of Section G of the Authorizing Resolution³ (subject to successful completion of agreement between DoITT and the submitter on contractual language articulating full proposed franchise agreement terms, which could then be presented to the public for review and to the FCRC for possible approval).

SECTION 6. PROPOSAL EVALUATION PROCEDURES.

(a) Evaluation Committee. Submissions will be reviewed by an Evaluation Committee consisting of not fewer than three (3) people with knowledge, expertise and experience sufficient to make a fair and reasonable evaluation of the submissions. Written evaluation forms (which may be in the form of rating sheets or other form of evaluation) shall be used to evaluate submissions and shall be signed and dated by all members of the Evaluation Committee. Initial evaluations may be amended, and the amended evaluations shall be recorded on amended evaluation forms. Copies of all initial and

³ However, a submitter may, without jeopardizing its eligibility to be recommended for a franchise, identify any such subsection which submitter believes, based on the caveat in the opening paragraph of Section G. of the Authorizing Resolution, would not be applicable to it pursuant to applicable law.

amended evaluation forms shall be maintained as part of DoITT's files. In evaluating each submission, the Evaluation Committee shall (applying the criteria enumerated in Section 6(c) of this Solicitation) either (i) find that such submission provides a sufficient basis for DoITT to engage further with the submitter to move forward with discussions toward proposed franchise agreement terms and completion of the preparation of contractual language articulating such terms, which could then be presented to the public for review and to the FCRC for possible approval, or (ii) that such submission does not provide a sufficient basis for such further engagement. In no event shall any Evaluation Committee determination be construed as having the effect of granting a franchise to any entity, as grants of franchises pursuant to this Solicitation are subject to the approval process described in Section 4(d) above, and Evaluation Committee evaluations are thus limited in scope to determinations regarding DoITT's willingness to engage further with submitters to agree on franchise terms and complete documentation for potential submission to the FCRC.

(b) Proposal Package. At a minimum, a proposal package submitted in response to this Solicitation must be comprised of the following:

- (i) A statement consistent with Section 5 of this Solicitation.
- (ii) A form, which when completed and submitted with the proposal package, serves to confirm the release date of the Solicitation to which the proposer is responding and as the proposer's acknowledgement of the receipt of any addenda to this Solicitation which may have been issued prior to the submission of the proposal. (See Attachment #3 attached hereto).

(iii) Such material as the submitter believes would be helpful to the evaluation of its proposal, including, without limitation any material the proposer believes would be useful in an evaluation of the financial, legal, technical and managerial experience and capabilities of the proposer, as described in clause (2) of Section 6(c) below. Such material may include, for example, financial statements of those entities that will either be holding any franchise or assuring performance thereunder, the identities and qualifications of the management team that the submitter anticipates will be managing any franchise granted, and/or other material which the submitter believes would be useful to the Evaluation Committee in conducting its evaluation.

(c) Proposal Evaluation Criteria. The criteria to be used by the Evaluation Committee in evaluating each submission shall be (1) whether the submitting entity has confirmed that it is prepared to pay the City adequate compensation as required by the Authorizing Resolution and the City's Charter; and (2) the financial, legal, technical and managerial experience and capabilities of the submitting entity, (including the adequacy of such entity's ability to maintain the property of the City in good condition throughout the term of the franchise and in a manner consistent with the City's management of the public rights-of-way).

(d) Submission Requirements. Submitters are required to submit one (1) signed original and five (5) copies of each submission package to the contact person listed on the cover page of this Solicitation. There is no page limit for submissions, although conciseness is encouraged.

(e) Communication With DoITT Limited During Evaluation Period.

During the period from an entity's submission of a response to this Solicitation until such submitting entity is notified by DoITT that the evaluation of such submission by the Evaluation Committee has been completed, such entity shall not initiate any communication with any employee in any City agency regarding this Solicitation or its submission except in a writing directed to the Agency Contact listed on the cover page of this Solicitation.

SECTION 7. FACILITIES.

No franchise granted pursuant to this Solicitation will authorize installation of facilities on City property unless:

(a) such facilities have no land use impacts or implications because they are to be placed underground; or

(b) a new solicitation is first issued, reflecting such contemplated installation, which new solicitation shall be compliant with (without limitation) clause (2) of Section 363.e. of the Charter, and a new or amended franchise reflecting such contemplated installation is granted (after all legally required approvals) pursuant to such solicitation; or

(c) such facilities are ancillary to facilities installed consistent with the preceding subsections (a) and/or (b) and have no land use impacts or implications as has been determined by the Department of City Planning ("DCP") under an "Existing Determination" (defined as a determination previously made by DCP, as such may be revised from time to time by DCP which revision (i)

reflects streetscape and urban design considerations, (ii) is arrived at after the franchisee is given 30 days notice and opportunity to comment in person and in writing and such comments, including any comments with respect to the costs of implementation, are duly considered, and (iii) is consistent with the ability of the franchisee to provide the services authorized by the franchise.)

Nothing in this Section 7 is intended to bar franchises granted hereunder from authorizing the continued operation and maintenance of facilities installed pursuant to and in accordance with, franchises from the City previously held by the franchisee.

SECTION 8. CONFORMITY WITH THE AUTHORIZING RESOLUTION.

Any franchise granted pursuant to this Solicitation shall comply with the requirements of Section G. of the Authorizing Resolution, and nothing contained in this Solicitation shall be construed to be inconsistent with such required compliance.

SECTION 9. FRANCHISE AGREEMENT EXAMPLES; FORMS OF COMPENSATION BEING CONSIDERED.

If and when the City grants one or more franchises pursuant to this Solicitation, any person or entity contemplating submitting a proposal in response to this Solicitation or who has already submitted such a response, may request a copy of such granted franchise or franchises, which may provide general guidance to such person or entity as to the kinds of terms and conditions DoITT may seek to

include in subsequent franchises of the similar type. Until the City has granted the first franchise or franchises pursuant to this Solicitation, in order to obtain such guidance, any person or entity contemplating submitting a proposal in response to this Solicitation or who has already submitted such a response, may request an initial draft of a format of information services franchise which is currently under consideration by DoITT. Whether DoITT provides in response to such request an actual franchise agreement that has been granted pursuant hereto or an initial draft format, in no event is such material to be treated as an offer of a franchise or as a final or definitive statement of the terms of an agreement that DoITT or the City would require or would find acceptable in connection with any particular submitter. Persons or entities considering submitting a proposal in response to this Solicitation, or who do submit a proposal in response to this Solicitation, can also note that although some previously forms of landline communications transmission franchises granted by the City in the past have included provisions for franchise compensation rental to the City in the form (at least in part) of a percentage of revenues generated by the franchisee, DoITT is currently contemplating, as of the issuance of this Solicitation, alternatives to “percentage of revenue” -based compensation rent formulas for franchises issued pursuant to this Solicitation. Persons or entities considering submitting a proposal in response to this Solicitation, or who do submit a proposal in response to this Solicitation, are welcome (except during the period described in subsection (e) of Section 6 of this Solicitation) to contact DoITT to discuss in further detail potential forms of franchise rental compensation

and other potential franchise agreement terms being contemplated. In lieu of, or in addition to, such pre-submission discussions, there may also be discussions regarding such matters with proposers after submissions in response to this Solicitation have been received to the extent the evaluation process described in Section 6 above results in a determination that there is a sufficient basis for DoITT to engage further with the submitter to move forward with discussions toward proposed franchise agreement terms.

APPENDIX A: City Council Authorizing Resolution



The New York City Council

City Hall
New York, NY 10007

Legislation Text

File #: Res 1909-2013, Version: *

THE COUNCIL OF THE CITY OF NEW YORK RESOLUTION NO. 1909

L.U. No. 821

CITYWIDE

20135563 GFY

Resolution authorizing franchises for telecommunications services.

By City Council Members Comrie and Weprin (at the 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 telecommunications services; and

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

WHEREAS, the Council has determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and stimulate commerce by assuring the widespread availability of telecommunications services;

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 cable, wire or optical fiber and associated equipment on over and under the inalienable property of the City (including through pipes, conduits, sewers and similar improvements thereto) to be used in providing one or more telecommunications services (as that term is defined in Section C. of this resolution) in the City.
- 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. The public services to be provided under such franchises shall be one or more "telecommunications services", defined for purposes of this resolution as the transmission of voice, data, information service and/or video signals, or any other form of wire communications or radio communications (as such terms are defined in subsections (40) and (59) of Section 3 of the federal Communications Act of 1934, as amended, or successor provisions thereto) but for purposes of this resolution "telecommunications services" shall not include any of the following: (i) "cable television services" as defined in the authorizing resolution adopted by the Council on May 15, 2012 as Resolution No. 1334, or any successor resolution thereto; (ii) "mobile telecommunications services" as defined in the authorizing resolution adopted by the Council on August 25, 2010 as Resolution No. 191 or any successor resolution thereto; and (iii) "public pay telephones" as defined in the authorizing resolution adopted by the Council on December 21, 2009 as Resolution No. 2309 or any successor resolution thereto.
- D. All franchises granted pursuant to this resolution shall require the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.
- E. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this

resolution was 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 criteria to be used by the Department of Information Technology and Telecommunications to evaluate response 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 to be paid to the City, and
- (2) The ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise and in a manner consistent with the City's management of the public rights-of-way.

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 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 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 the provision of facilities or services to the City 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 at the direction of the Department of Information Technology and Telecommunications;
- (6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;
- (7) all franchisees shall be required to maintain complete and accurate books of account and records for purposes of reviewing and/or enforcing 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 that include 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 ensure adequate oversight of the franchisee's performance of its franchise obligations;

- (12) 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;
- (13) 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;
- (14) all franchisees shall have been subject, prior to the commencement of the franchise term, to review under the City's Vendor Information Exchange System ("VENDEX") or any successor system;
- (15) all franchisees shall include provisions incorporating the MacBride Principles;
- (16) 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;
- (17) there shall be provisions requiring the franchisee to protect the property of the city, and the delivery of public services through, along or across such property, from damage or interruption of operation, as a result of the construction, operation, maintenance, repair and/or removal of franchisee's facilities in the inalienable property of the City; and
- (18) there shall be provisions designed to minimize the extent to which the public use of the street of the City are disrupted in connection with the construction, installation, use operation, maintenance and/or removal of franchisee's facilities in the inalienable property.

H. 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) within (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution; and
- (3) on or before July 1 of each year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution during the preceding calendar year.

I. If any clause, sentence, paragraph, section or part of this resolution shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this resolution or the application thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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 22, 2013, on file in this office.

.....
City Clerk, Clerk of The Council

ATTACHMENT #1: DOING BUSINESS DATA FORM

The Doing Business Data Form and Questions and Answers about the Doing Business Data Form are also available from DoITT upon request as separate PDF files.

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 on the *Data Form* 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.

ATTACHMENT #2: FORM OF AFFIRMATION
AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except

Full name of Proposer or Bidder -----

Address-----

City -----**State**----- **Zip Code**-----

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER - * - - - - - - - - - -

B - Partnership, Joint Venture or Other Unincorporated organization
Employer Identification Number- - - - - - - - - -

C - Corporation
Employer Identification Number - * - - - - - - - - - -

BY:

Signature -----

Title -----

If a corporation place seal here

Must be signed by an officer or duly authorized representative. Please affix notary on next page.

*Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.

ATTACHMENT #3: ACKNOWLEDGMENT OF
RELEASE DATE AND ADDENDUM

PROPOSER'S NAME: _____

SOLICITATION RELEASE DATE: _____

NUMBER OF ADDENDA RECEIVED: _____

ISSUE DATE(S) OF ADDENDA: _____

ATTACHMENT #4: SOLICITATION AND ADDENDA INFORMATION

The Solicitation document and subsequent addenda can be accessed by logging onto the following web address:

DoITT's homepage: <http://www.nyc.gov/html/doitt/home.html>

Unless otherwise specifically requested in writing via mail, e-mail, or fax to the Agency Contact Person, DoITT will notify companies of updates such as addenda to the Solicitation via e-mail. If DoITT does not have a company's e-mail address, companies must provide an e-mail address to the Agency Contact Person if they wish to continue receiving direct notification of updates. Otherwise, they may find any updates on the above website.

If you wish to receive this Solicitation or addenda by hard copy mail, please provide the following information to the Agency Contact Person listed on the front of this Solicitation as soon as possible **via mail, e-mail or fax**. Hard copies of the Solicitation will only be mailed. Subsequent addenda will either be mailed or faxed.

Contact Person's
Name:
Title:
Company Name:
Company Address
(Street, City, State,
Zip Code):
Telephone Number:
Fax Number:
Information Requested
by Hard Copy
(Solicitation, Addenda, both): _____