

that jeopardizes the ability of the City to access the escrowed source code as provided for under this Agreement.

The escrow agreement provisions set forth in this Section 2.4.2(e) shall apply with equal force to any software licensed to the City (excluding “off-the-shelf” software) by a subcontractor of the Company.

2.4.3. Warranties of Title. The Company represents and warrants that the Plans and Specifications and Software: (a) are original to the Company or validly licensed or sublicensed to the Company; (b) to the knowledge of the Company after reasonable inquiry, do not infringe, dilute, misappropriate, or improperly disclose any intellectual property or proprietary rights of any third party, or otherwise violate any law, rule, or regulation; and (c) do not constitute defamation or invasion of the right of privacy. The Company further represents and warrants that it has not granted any license(s), permit(s), interest(s), or right(s), exclusive or nonexclusive, to any party other than the City with respect to the Plans and Specifications and will not grant any such licenses unless such grants are necessary to perform the Company’s obligations under this Agreement.

2.4.4. Permits, Authorizations, Approvals, Consents and Licenses.

(a) Before installing any Coordinated Franchise Structure, the Company shall obtain at its sole cost and expense, any necessary permits, authorizations, approvals, consents, licenses, and certifications required for each Coordinated Franchise Structure, including, but not limited to: (i) pursuant to all City laws, rules and codes related to materials and construction and all applicable sections of the building, plumbing and electrical codes of the City; (ii) all permits, authorizations, approvals, consents, licenses and certifications required by DOT, Landmarks and the Art Commission, and any other agency of the City with jurisdiction over the property on which the Coordinated Franchise Structure is to be located; (iii) any necessary permits, authorizations, approvals, consents, licenses, and certifications required pursuant to any applicable state and federal laws, rules, regulations and policies, writs, decrees and judgments; and (iv) any necessary permits, authorizations, approvals, consents, licenses and certifications from Persons to use a building or other private property, easements, poles, and conduits. The Company acknowledges that the City, in exercising its rights and obligations under this Agreement, will act consistent with the memorandum of understanding entered into between DOT and the Borough Presidents

(b) The Company agrees that fees paid to obtain any permits, consents, licenses, or any other forms of approval or authorization shall not be considered in any manner to be in the nature of a tax, or to be compensation for this franchise in lieu of the compensation described in Section 9 hereof.

2.4.5. Design of Coordinated Franchise Structures. The design of all Coordinated Franchise Structures installed pursuant to this Agreement (other than Existing Bus Shelters) shall be in compliance with all applicable laws, rules and regulations of the City and shall be subject to approval of the Art Commission and, to the extent required by law, Landmarks. Company shall make good faith efforts to obtain approval of the Art Commission