

THE CITY OF NEW YORK
DEPARTMENT OF INFORMATION TECHNOLOGY
AND TELECOMMUNICATIONS

REQUEST FOR PROPOSALS
FOR FRANCHISES FOR THE INSTALLATION AND USE OF
TELECOMMUNICATIONS EQUIPMENT AND FACILITIES, INCLUDING BASE
STATIONS AND ACCESS POINT FACILITIES, ON CITY-OWNED STREET
LIGHT POLES, TRAFFIC LIGHT POLES, HIGHWAY SIGN SUPPORT POLES
AND CERTAIN UTILITY POLES LOCATED ON CITY STREETS, IN
CONNECTION WITH THE PROVISION OF MOBILE TELECOMMUNICATIONS
SERVICES

IMPORTANT:

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

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SECTION 1. INTRODUCTION.

(a) General Background. The New York City Department of Information Technology and Telecommunications (“DoITT”) issued three Requests for Proposals (“RFP”s), one in February 2004 seeking proposals for franchises for the installation and use of mobile telecommunications antennae and related facilities on City-owned street light poles, traffic light poles and highway sign support poles, and another two similar RFPs in July 2007 and May 2011, which also incorporated the use of privately-owned utility poles into the franchise. DoITT subsequently issued franchises pursuant to the 2004, 2007 and 2011 RFPs (the “Existing Franchises”) which were awarded to several different entities that continue to be active (the “Existing Franchisees”). DoITT has recently received expressions of interest from additional companies seeking franchises similar to the Existing Franchises and has also received expressions of interest seeking amendment of Existing Franchises granted pursuant to the 2004 RFP to include the option to use private utility poles in lieu of City owned poles where that would be a more effective alternative. As previously noted in the February 2004, July 2007 and May 2011 RFPs, poles within City street rights of way are not the only, or even the preponderant, type of location that can be used to locate mobile telecommunications antenna facilities and equipment. Indeed, the mobile telecommunications industry has largely developed to-date using private property (rather than street poles) to locate antenna facilities and equipment, access to which private, non-street, property requires no authority under a franchise granted pursuant to this RFP. It continues to be DoITT’s view and determination, then, that while it may be in the public interest to authorize installation of telecommunications antennae and related facilities on street poles,

any decision not to make such property available to one or more entities is not intended to prohibit or effectively prohibit any such entity from providing its services, which may be provided using private property (with respect to which no franchise is required) to place antennae.

(b) Procedural Background. Pursuant to Section 363 of the Charter, the Mayor submitted to the Council of The City of New York (the “Council”) a proposed authorizing resolution for franchises in connection with mobile telecommunications services. On August 25, 2010, the Council adopted such an authorizing resolution (Resolution No. 191, attached hereto as “Exhibit A”, referred to hereinafter as the “Authorizing Resolution”) and thereby continued to authorize DoITT to grant non-exclusive franchises for the installation of telecommunications facilities and equipment on, over and under inalienable property of the City in connection with the provision of mobile telecommunications. Charter Section 1072 grants DoITT the power to, among other things, develop and issue requests for proposals or other solicitations of proposals for telecommunications-related franchises. Pursuant to said Charter Section 1072 and the Authorizing Resolution, DoITT hereby issues this RFP to award non-exclusive franchises for the installation of equipment and facilities, on “street operations poles” and “street utility poles” (as said terms are defined in the following subsection (c)), in connection with the provision of mobile telecommunications services in the City.

(c) Definitions. For the purposes of this RFP, “inalienable property of the City” shall mean the property designated as inalienable in Section 383 of the Charter. For the purposes of this RFP, “mobile telecommunications services” shall have the meaning set forth therefor in the Authorizing Resolution. For

purposes of this RFP, the term “street poles” shall mean the following facilities to the extent they are located on the City’s inalienable property: (i) City-owned street light poles, traffic light poles and/or highway sign support poles (together, “street operations poles”), and (ii) privately-owned poles owned by a “utility” as that term is defined in 47 USC Section 224 provided such privately-owned utility poles are lawfully located on the City’s inalienable property (the poles described in this clause (ii) being referred to hereinafter as “street utility poles”).

(d) Proposals Sought. DoITT is, under this solicitation, seeking proposals for franchises that would permit the placement on street poles of small, lightweight, mobile telecommunications reception/transmission equipment such as microcell antennas, 802.11x access points, and other types of transceivers and similar and related equipment (all such forms of reception/transmission and related equipment designed to support and facilitate wireless telecommunications are hereinafter referred to as “base stations”). *Proposals are invited both from:*

(i) Existing Franchisees who seek to expand their existing authority to include street utility poles, and

(ii) entities who are not Existing Franchisees and who seek franchises that will be generally comparable to the Existing Franchises (as expanded pursuant to preceding clause (i)) to authorize the use of street poles for the contemplated purposes.

New franchises granted hereunder, as with the Existing Franchises, will also authorize (subject to all New York City Department of Transportation and other City installation and permit requirements) the franchisees to install cabling for the purpose of connecting base stations installed on street poles to one another or to

a supporting telecommunications system.¹ Allocation of individual street operations pole locations shall be implemented in a manner consistent with the allocation system established in the Existing Franchises. Allocation of street utility poles will be up to the private utility owners of such poles (subject, where applicable, to any legal requirements under the federal Pole Attachment Act to which such utilities may be subject).

(e) Franchise Agreements. Proposers seeking new franchises should assume that franchise agreements entered into pursuant to this RFP will be generally comparable to those of the Existing Franchisees except to the extent necessary to reflect specific differences distinguishing this RFP from the Existing Franchises and except as necessary to reflect those matters which are, under this RFP, specific to the particular proposer, such as name and address, amounts bid for per-pole compensation, which geographical zone or combination of zones the proposer proposes to use, and the inclusion or non-inclusion of street utility poles use in the particular franchise².

(f) Term. Proposers seeking new franchises should assume that franchise agreements entered into pursuant to this RFP shall expire November 14th 2019.

¹ If a franchisee needs to connect one or more base stations by cable or wire to other telecommunications facilities but does not choose to install wiring or cabling itself, it may contract with one of the City's many high-capacity broadband telecommunications franchisees, which can provide connections and fiber capacity on their franchised networks.

² The Existing Franchises divide the City into three geographical zones of the City. Zone A consists of the portion of the Borough of Manhattan which includes 96th Street (inclusive of the northernmost boundary of the north side of the sidewalk of 96th Street) and all parts of Manhattan that lie south of 96th Street. Zone B consists of all portions of the City not in Zones A or C. Zone C consists of the area covered by Community Districts 1, 2, 3, 4, 5, 6 and 7 in the Borough of the Bronx, Community Districts 3, 4, 5 and 16 in the Borough of Brooklyn, and Community Districts 10 and 11 in the Borough of Manhattan.

SECTION 2. NON-EXCLUSIVITY; RESERVATION OF AUTHORITY.

Any franchise award or awards by DoITT from among the proposals submitted pursuant to this RFP will be non-exclusive (although with respect to any specific site or location for the placement of facilities or equipment, technical, design, safety and/or City operational considerations require that use of such particular site or location be limited, as further described in applicable language of the Existing Franchises which will be incorporated into any new franchises granted pursuant to this RFP). DoITT reserves, to the fullest extent permitted by law, the right to select zero proposals, one proposal or multiple proposals. DoITT also reserves the right to issue additional RFPs of the same or similar effect in the future. DoITT also reserves the right to use street operations poles for mobile communications purposes or other purposes that would serve the City's own government operational needs or other lawful government activities and language regarding such reserved authority included in the Existing Franchises will also be included in any new franchises granted pursuant to this RFP. In any event, no decision by the City to limit the grant of rights to install mobile facilities as contemplated in this RFP will limit the rights of any entity to locate facilities on private property outside the boundaries of City streets for the purpose of providing telecommunications services.

SECTION 3. RFP TIMETABLE.

Release date of this RFP will be May 6, 2015 (the "Release Date").

Proposals must be received by noon on June 5, 2015 (the "Submission Deadline"). Proposals must be submitted to Brett Sikoff, Department of

Information Technology and Telecommunications, 2 Metro Tech Center, 4th Floor, Brooklyn, New York 11201.

DoITT RESERVES THE RIGHT, SUBJECT TO ANY APPLICABLE FEDERAL OR STATE LAW, TO CANCEL OR AMEND THIS RFP AT ANYTIME. INTERESTED PARTIES ARE ADVISED TO CONTACT DOITT PRIOR TO SUBMITTING THEIR PROPOSAL TO CONFIRM THAT THIS RFP REMAINS IN EFFECT.

SECTION 4. GENERAL INFORMATION.

(a) Status of Information. DoITT shall not be bound by any oral or written information released prior to the issuance of this RFP. PROPOSERS SHOULD NOT RELY ON ANY REPRESENTATIONS, STATEMENTS OR EXPLANATIONS OTHER THAN THOSE MADE IN THIS RFP OR IN A FORMAL ADDENDUM TO THIS RFP.

(b) Proposer Inquiries. All inquiries regarding this solicitation must be in writing, addressed to the Agency Contact Person designated on the cover sheet of this RFP, or such person's successor.

(c) Communication with DoITT. Proposers are advised that, from the day their proposal has been submitted until DoITT has decided to grant or deny an award (the "Evaluation Period"), all contact with DoITT personnel related to this RFP must be written and is limited to the Agency Contact Person designated on the cover sheet of this RFP, or such person's successor, and persons designated by the Agency Contact Person.

(d) Addenda. DoITT will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda.

PROPOSERS SHOULD NOT RELY ON ANY REPRESENTATIONS, STATEMENTS OR EXPLANATIONS OTHER THAN THOSE MADE IN THIS RFP OR IN A FORMAL ADDENDUM.

(e) Modified Proposals; Late Proposals and Modifications. Proposers may submit modified proposals to replace all or any portion of a previously submitted proposal up until the Submission Deadline. The Evaluation Committee (see Section 10(a) hereof) will only consider the latest version of the proposal submitted by the Submission Deadline. Proposals or modifications received after the Submission Deadline shall be deemed late and shall not be considered pursuant to this RFP.

(f) Costs Incurred by Proposers. DoITT shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therewith.

(g) Oral Presentation; Interviews; Additional Information. DoITT may require proposers to give oral or visual presentations in support of their proposals, or to exhibit or otherwise demonstrate the information contained therein. DoITT reserves the right to require the submission of additional information from any proposer during the Evaluation Period.

(h) VENDEX; Investigation Provisions; Local Law 34 of 2007.

(i) Respondents to this RFP 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 and/or amended pursuant to this RFP 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 Exhibit F) 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.

(i) RFP Postponement or Cancellation. To the extent consistent with applicable law, DoITT reserves the right to postpone or cancel this RFP and to reject all proposals at any time.

(j) Confidential or Proprietary Information. It is not expected that information supplied by a proposer in its proposal will be confidential. In the event a proposer believes that specific information it must submit to respond fully and completely to this RFP should be treated confidentially by DoITT, it should so advise DoITT in writing. DoITT will attempt to treat as confidential proprietary information of any proposer, consistent with legal requirements. Any allegedly proprietary information contained in a proposal must be clearly designated as such, and should be separately bound and labeled with the words "Proprietary Information". Appropriate reference to this separately bound information must be made in the body of the proposal. MARKING THE ENTIRE PROPOSAL AS PROPRIETARY WILL RESULT IN THE PROPOSAL BEING RETURNED TO THE PROPOSER UNREAD. Proposers should be aware, however, 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 proposal or portion thereof submitted in connection with this RFP. In the event that such disclosure is requested by a third party, DoITT will provide notice to the proposer as far in advance as practicable of any deadline for responding and shall consult with the proposer to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL. Consistent with the requirements of FOIL, the final determination whether such information may be withheld from disclosure shall be made by DoITT. In the event that DoITT determines that information may not be withheld, DoITT will attempt to provide

the proposer with timely notice of intent to disclose in order that the proposer may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law. The proposer expressly acknowledges and agrees that neither DoITT nor the City of New York will have any liability to the proposer in the event of disclosure of materials designated by the proposer as “Proprietary Information”.

The following Sections 5, 6, 7 & 8 of this RFP summarize, in part, Appendix A of existing franchise contracts executed in 2012 (Exhibit B attached hereto). Proposers seeking new franchises should assume that Appendix A of franchise agreements entered into pursuant to this RFP will be generally comparable to those of the Existing Franchisees awarded franchise contracts pursuant to the 2011 RFP.

SECTION 5. DESIGN AND TECHNICAL REQUIREMENTS FOR BASE STATION EQUIPMENT LOCATED ON STREET OPERATIONS POLES.

(a) Permitted Components and Size of Base Station Equipment.

Proposals for location of base stations and related facilities on street light poles (SLPs), traffic light poles (TLPs) or highway sign support poles (HSSPs) shall include at least a schematic design for, and a photograph of, the equipment intended to be installed. The fullest possible design description and photographic description of the proposed installations are encouraged. Proposals may contemplate the installation of one, two or all three of the following elements to be installed on SLPs/TLPs/HSSPs, provided such elements to be installed are consistent with the following parameters:

Element (1): Equipment Housings. One equipment housing (which may enclose, incorporate or consist of one or more than one antenna of any type, or other form of equipment) within either of the two following size parameters:

(A) An equipment housing with a volume no greater than 2.8 cubic feet (i.e. 4,840 cubic inches). Equipment housings that are of a volume no greater than 2.8 cubic feet, but that are not “sub-sized housings” under subsection (B) below are referred to in this RFP as “standard housings”. Standard housings shall have a maximum width (i.e., a maximum horizontal dimension, perpendicular to the pole and parallel to the ground) of eighteen inches unless a substantial operational need for a larger width is demonstrated to the satisfaction of DoITT and the City’s Department of City Planning (“DCP”).

(B) An equipment housing with maximum dimensions of 13 inches by 9 inches by 4 inches (that is, no more than thirteen inches in its longest dimension, nine inches in its second longest dimension and four inches in its shortest dimension). Equipment housings complying with this subsection (B) are referred to in this RFP as “sub-sized housings”.

Equipment housings installed pursuant to this RFP shall be sub-sized housings unless an operational need for a standard housing is demonstrated to DoITT’s satisfaction.

Element (2): Stick-Type Antennas. Up to two stick-type antennas, each no more than two inches in diameter and extending no more than thirty-six inches in length, extending vertically (either up or down) from a base either at the top of the pole or on the related equipment housing; provided that where such equipment is installed on “bishop’s crook” design SLPs and located within the “limit zone” defined in Section 5(c)(3) of this RFP below, such antennas must be attached to the equipment housing and not extend more than one foot above the limit zone or the widest part of the flared decorative element directly above the limit zone, whichever is shorter, or the start of the flared decorative element below the limit zone, unless an exemption to these height restrictions has been made by DCP and DoITT upon the determination that the antenna designs are inconspicuous.

Element (3): Interconnecting Wiring/Cabling. Wire or cable interconnecting the above elements with each other and with underground power and/or other supporting utility facilities (in areas of the City where such utility facilities are located above ground, then such wire interconnection shall be permitted to connect to such above ground facilities), with as much of such wire or cable being located inside the street pole, rather than externally, as practicable.

(b) Permitted Weight of Base Station Equipment. All equipment to be installed on a pole must be of a weight no greater than that compatible with the capacity of the pole to safely and securely support such equipment. Calculation of such compatible weights shall as appropriate take into account snow loads or

other reasonably predictable weight burdens to which equipment may be subject in the field.

(c) Permitted Location and Orientation on Street Operations Poles of Base Station Equipment.

(1) Unless otherwise specifically permitted by the City, all equipment on any SLP/TLP/HSSP will be located on the vertical shaft portion of the pole (that is, unless otherwise permitted by the City, no equipment will be located on any “arm” or horizontal portion of the SLP/TLP/HSSP) and equipment housings shall be oriented vertically so that the largest dimension is the height. Notwithstanding the preceding sentence, however, sub-sized housings and equipment related thereto may be located at the top of the curved arm of an SLP with a cobra-head fixture (immediately adjacent to the luminaire itself) or at the junction of the curved arm and the vertical portion of the pole (if, pursuant to this sentence, housings are located on a horizontal “arm”, such housings shall be oriented so that their largest dimension is also horizontal).

(2) On TLPs with signal “arms”, housings shall be located in the “arm zone”, the “arm zone” being defined as the portion of the pole above the curved arm and below the short cross bar carrying the tension rods supporting the “arm”. On TLPs without signal “arms”, and on SLPs, housings shall be located, except as expressly permitted by the City, not lower than fifteen feet above curb level (except that sub-sized housings may be located as described in the final sentence of the preceding subsection (1) even if such location would be inconsistent with such height requirement).

(3) Notwithstanding anything to the contrary in this subsection (c), any facilities located on “bishop’s crook” design SLPs shall be installed only within the “limit zone”, defined as a four foot zone of minimal or no decoration generally located on such poles from about fifteen feet above street level to about nineteen feet above street level.

(d) Permitted Visual Appearance of Base Station Equipment.

(1) Each equipment housing must be painted the same color as the pole on which it is sited.

(2) No writing, symbol, logo or other graphic representation that is visible from the street or sidewalk shall appear on any exterior surface of an equipment housing.

(e) Review Requirements for Design and Installation of Base Station Equipment. Installation of equipment on poles shall be subject to the City’s right to review and approve the final design and appearance of all equipment to:

(1) ensure compliance with all applicable laws, rules and regulations of the City (including to the extent applicable and without limitation Landmarks Preservation Commission and Public Design Commission requirements),

(2) ensure public safety, the integrity of City facilities and non-interference with pedestrians and vehicular traffic, and to

(3) ensure esthetic consistency with the poles to which the equipment will be attached (including signage and other items or matter that may be located on such poles) and the surrounding context.

Potential proposers should note that in some areas of the City (such as historic districts, business improvement districts or other types of areas) specially designed poles have been or may be installed in some locations. Franchisees seeking to install equipment on such specially designed poles may be required to modify otherwise permitted equipment designs for consistency with special pole designs.

(f) Power Supply. Each franchisee will be responsible for obtaining and paying for electrical power for its equipment.

(g) Radio Frequency Energy Exposure Limits. Proposals shall include documentation showing that the radio frequency energy exposure from equipment proposed to be installed will not exceed the maximum permitted levels established by the Federal Communications Commission (FCC). Franchise contracts issued pursuant to this RFP will require on-going compliance with such FCC maximum permitted levels (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), and permit the City to require testing, from time to time, by independent experts, at the expense of franchisees, to ensure such compliance.

(h) City Pole Management Requirements. Any facility located on any street operations pole will be subject to the City's operational needs with respect to such pole. Thus, for example, if the City determines that any pole is no longer necessary or appropriate at its location then a franchisee with facilities on such pole will be required to remove such facilities or risk removal by the City at the franchisee's expense. In addition, if the City determines that it is appropriate to move or remove any pole temporarily to accommodate City or public activities (for example a parade such as the annual Macy's Thanksgiving Day parade),

then a franchisee will be required to cooperate, at franchisee's expense, with such temporary move or removal. As a further example, if the City reasonably determines that due to installation of a facility or facilities being installed in furtherance of City operations it is no longer appropriate to maintain a facility or facilities installed pursuant to the franchise contract, then the franchisee with such facility or facilities will be required to remove such facility or facilities or risk removal by the City at the franchisee's expense. All installations pursuant to a contract awarded as a result of this RFP shall be performed in a manner consistent with the requirements of the City's Department of Transportation implementing its authority to protect the integrity, operability, reliability and appearance of SLPs, TLPs and HSSPs and to manage vehicular and pedestrian traffic.

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

SECTION 6. LOCATION OF BASE STATIONS TO BE PLACED ON STREET OPERATIONS POLES.

(1) No more than one base station will be permitted on any single pole.

(2) Base stations will only be permitted on SLPs if such SLPs are located at intersections, except that such base stations may be placed on SLPs at other than intersections upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such siting at non-intersection locations (in the event of such approved location at non-intersection sites, only sub-sized housings will be placed at such non-intersection sites unless there is a further demonstration to the satisfaction of DoITT and DCP that there is an operational need for standard housings at such sites).

(3) Base stations will be permitted on SLP sites at any intersection only up to the number which leaves two SLP sites at each intersection without such base stations, and thus available for future designation, except that such base stations may be permitted pursuant to this RFP at locations which reduce below two the number of SLPs at an intersection left without such base stations upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such siting.

(4) Due to City operational needs, TLPs on which a traffic signal controller box is located (usually one pole per intersection with a traffic light) are not being made available for use.

(5) Base stations will only be permitted on TLPs that support a signal “arm” reaching into the roadbed, except that if at an intersection there are no TLPs with such a signal arm, then up to two TLPs without signal arms may be used for base stations at such intersection.

(6) Any franchise agreement granted pursuant to this RFP will require that base stations sited pursuant to the franchise be placed, located and operated so as not to interfere with the operation of base stations of other franchisees or with public safety operations or other City operations.

SECTION 7. DESIGN AND LOCATION ON STREET UTILITY POLES.

The design and location of equipment placed on street utility poles shall be consistent with the above requirements in Sections 5 and 6 to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable utility purposes.

SECTION 8. MAXIMUM NUMBER OF POLES AVAILABLE.

Each franchisee will be limited to using a maximum number of 3,000 street poles unless and until the City determines that such maximum should be increased.

SECTION 9. FRANCHISE COMPENSATION.

(a) Per Pole Compensation for Street Operations Poles.

It is anticipated that compensation to the City for the placement of base stations on SLPs/TLPs/HSSPs will be generally comparable in scope to that paid by mobile telecommunications providers for placement of base stations on rooftops

and other private property, in light of the fact that by making available its pole sites for this purpose, the City is making available certain of its facilities (which have been built for, and have historically been used for, purposes other than for mobile telecommunications or other utility equipment) for use in a manner comparable to that for which private property sites are used for mobile telecommunications. Per pole compensation under any franchise agreement granted pursuant to this RFP will be at least equal to the lowest per pole compensation applicable to each respective zone used in the Existing Franchises (see footnote 2 on page 7 above for a geographical description of each zone; the lowest per pole compensation applicable to each zone under the Existing Franchises is \$252.00 (two hundred fifty two dollars) per pole per month in Zone A, \$58.21 (fifty eight dollars and twenty one cents) per pole per month in Zone B and \$11.31 (eleven dollars and thirty one cents) per pole per month in Zone C). Proposers may propose more than that minimum if they wish. Proposers might wish to bid more than the minimum because the order of selection of individual poles consistent with Appendix A of the Existing Franchises and with franchises granted pursuant to this RFP will be based in each zone on the following order: First, Existing Franchisees whose franchise covers the particular zone, in the priority order already established under such Existing Franchises. Second, franchisees whose franchises are granted pursuant to this RFP and whose franchises cover the particular zone, with such franchisees proceeding in order of the amount they bid as per pole compensation within such zone (from highest to lowest) which bids will be incorporated as the per pole compensation payable by that particular franchisee within that particular zone. Lastly, franchisees holding franchises granted under future RFPs similar in effect to this one, may have the

opportunity to participate, but as provided in the Existing Franchises and as is expected to be provided in franchises granted pursuant to this RFP, such later franchisees would be expected to hold a later priority.

(b) Per Pole Compensation for Street Utility Poles. Neither Existing Franchisees seeking expansion of their franchise rights to include street utility poles nor Proposers seeking new franchises need to make separate proposals for per pole compensation for street utility poles. Unless proposers offer convincing reasons to proceed otherwise, franchise agreements and franchise agreement amendments issued pursuant to this RFP will provide that the per pole franchise compensation to the City for use of the space in the plane of the public rights-of-way on street utility poles will be \$16.00 (sixteen dollars) per pole per month in Zone B and \$3.00 (three dollars) per pole per month in Zone C (street utility poles are not permitted in Zone A) (see footnote 2 on page 7 above for a geographical description of each zone). Proposers may, if they wish, as part of their proposals, offer reasons why such amounts should be different in any franchise agreements or amendments issued pursuant hereto, and the City reserves the right to propose alternative amounts in proposed franchise agreements or amendments issued pursuant to this RFP if the City is persuaded by any such reasons that may be offered. In any event, the compensation payable to the City for installation of antennas and related facilities in the space above the streets and within the plane of the inalienable property of the City shall be in addition to any and all compensation required by and payable by a franchisee to the utility owner of any street utility pole for use of the street utility pole itself.

(c) Minimum Compensation. Availability of pole locations for the purposes described in this RFP is a limited resource that as a practical matter cannot be offered on an unlimited basis to all potential users. It is therefore important for the City to be able to appropriately manage the use of its poles and that its franchises for such use be granted to entities that are prepared to use the franchise resource in a significant way. An effective way of assuring that only those who will make significant use of the franchise resource seek and maintain a franchise is to require a minimum level of franchise compensation regardless of the number of poles the franchisee actually uses. The non-exclusive process which resulted in the Existing Franchises produced agreements based on three geographic areas, each with a different minimum compensation. The zones generally reflect the differing property value levels of these areas and are thus unlikely to produce for any provider levels of compensation to the City that are higher than that which private landlords would charge for locating similar sorts of facilities in the respective areas. Franchises granted pursuant to this RFP will include the same areas, known as Zones A, B and C in the Existing Franchises (see footnote 2 on page 7 above for a geographical description of each zone), and the same minimum compensation reflected in the Existing Franchises: \$100,000 per year for use of street poles in all three zones, \$50,000 per year for use of street poles only in Zones B and C, and \$10,000 per year for use of street poles only in Zone C. With respect to minimum compensation, proposers seeking new franchises need only identify which of these three choices (all three zones, Zones B and C, or just Zone C) they would like incorporated into a franchise agreement.

(d) Security Fund. Potential proposers shall note that any franchise granted pursuant to this RFP shall include provision for payment by the franchisee into a security fund, to be held by the City, sufficient to secure the City against abandonment of facilities on City property and damage to City property and to secure franchise compliance generally, including (without limitation) payment by the franchisee of compensation obligations. The security amounts shall be calculated as set forth in the Existing Franchise Agreements.

SECTION 10. PROPOSAL EVALUATION PROCEDURES.

(a) Evaluation Committee. Proposals 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 proposals. Written evaluation forms (which may be in the form of rating sheets or other form of evaluation) shall be used to evaluate proposals 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 amended evaluation forms shall be maintained as part of DoITT's files.

(b) Proposal Package. At a minimum, a proposal submitted in response to this RFP (except for a proposal by any Existing Franchisee that merely seeks to amend its Existing Franchise to incorporate the option to use street utility poles as an additional alternative) must be comprised of the following:

- (1) Technical Proposal – A narrative and/or other appropriate form of presentation which describes: (i) the equipment and facilities

which would be located on SLPs/TLPs/HSSPs, including at least a schematic design for, and a photograph of, the equipment intended to be installed (the fullest possible design description and photographic description of the proposed installations are encouraged); (ii) the services to be provided by such equipment and facilities, including the extent to which such equipment and facilities will be capable of serving multiple telecommunications service providers; (iii) the proposer's method(s) of installation of such facilities and equipment (including, to the extent not already included in the materials required by clause (i), a description of the mounting procedures and techniques to be used to attach the facilities and equipment to the poles) and a description of any connecting facilities proposed to be used as described in the third sentence of subsection (d) of Section 1 of this RFP; (iv) the proposer's plans for repair, maintenance, and/or removal of such facilities and equipment; (v) the proposer's plans for maintaining the City's property in good condition during the term of the franchise; and (vi) the time period during which the proposer anticipates installing the franchise facilities and, to the extent the proposer's system generally is not yet operational in the City, an anticipated time line for such system to become operational in the City. Maps, drawings, illustrations, charts or other graphic descriptions may be included in this portion of the proposal, are in fact encouraged, and in the case of the photographic and schematic design submission mandated by Section 5(a) of this RFP, required.

(2) Legal and Managerial Proposal – A narrative which (i) indicates the extent to which the proposer has secured any necessary

authorizations, approvals, licenses and/or permits required to undertake the activities proposed and an acknowledgment that the proposer will not undertake such activities unless and until such authorizations, approvals, licenses and/or permits are obtained (for any system and/or equipment that requires FCC licensing, the proposer must confirm in its proposal that such system and/or equipment is, or will be prior to installation, fully licensed by the FCC³; (ii) describes the managerial experience and capabilities of the proposer; and (iii) describes whether the facilities proposer proposes to install on City poles will be serving one or multiple telecommunications service providers. Such narrative may be in a format of the proposer's choice and may include: business references, a list of services provided by the proposer, an organization chart or outline identifying the names and titles of senior management that is or will be responsible for operating the proposer's system, and any other information the proposer deems relevant.

(3) Financial Capacity Proposal - A narrative which describes the proposer's financial ability to undertake the activities proposed and properly maintain affected City property. Such narrative may include any financial information the proposer deems relevant.

(4) Scope Proposal – A statement as to which of the three zone options described in the last sentence of Section 9(c) above (all three zones, just Zones B and C, or just Zone C) that the proposer seeks to

³ Franchise contracts issued pursuant to this RFP will require that such FCC licensing be maintained at all times during which applicable equipment remains installed on City property, such licensing requirement to include, without limitation, that any required site-specific FCC license be obtained prior to and maintained throughout the period of installation and that all installed equipment be FCC Type Accepted to the extent required under federal law or regulation.

have reflected in a franchise agreement as the area covered by its franchise. Selections of less than all three zones will in any event be subject to a periodic option to expand the area covered, which option will be generally comparable to that reflected in the Existing Franchises at Section IV of Appendix A of such Existing Franchises.

(5) Compensation Proposal - A description of which zone option it proposes to select initially and its proposal of a per pole compensation amount for each zone, which amount will be used to determine pole allocation within that zone among franchisees receiving new franchises pursuant to this RFP as described in Section 9(a) of this RFP.

(6) Release Date of RFP and Acknowledgement of Addenda; Affirmation - (i) A form, which when completed and submitted with the proposal package, serves to confirm the release date of the RFP to which the proposer is responding and as the proposer's acknowledgement of the receipt of addenda to this RFP which may have been issued prior to the submission of the proposal. (See Exhibit C attached hereto). (ii) The form of affirmation attached hereto as Exhibit D, signed by the proposer, which affirmation will also be included in any franchise agreement entered into pursuant to this RFP.

(c) Proposal Evaluation Criteria. The criteria to be used by the Evaluation Committee in evaluating each proposal shall be (1) the adequacy of the proposed compensation to be paid to the City for the use of the City property, (2) the ability of the respondent(s) to maintain the property of the City in good condition throughout the term of the franchise; and (3) the consistency of the

response(s) to the City's management of local rights-of-way activities, plans and goals (provided however that in no event shall the Evaluation Committee take into account, in evaluating proposals, matters, if any, that are outside the City's discretion to consider pursuant to federal or state law).

(d) Proposal Submission Requirements. Proposers are required to submit one (1) signed original and five (5) copies of each proposal package. There is no page limitation for proposals, although conciseness is encouraged.

SECTION 11. SPECIAL INSTRUCTIONS.

During the period between the release date of this RFP and the end of the Evaluation Period proposers who wish to communicate with DoITT regarding this RFP are required to communicate, in writing, exclusively with the Agency Contact Person listed on the cover sheet of this RFP (or such person's successor), except as otherwise specifically directed by the Agency Contact Person. In the event DoITT requires clarification of any portion of a proposal, it is possible that DoITT staff, other than the Agency Contact Person, may contact the proposer with a request for information. Proposers are asked to promptly respond to such requests in writing. Under no circumstances will a modification of the requirements of this RFP by DoITT be made formally other than in an addendum. No proposer's request for information will be considered formal unless made in writing to the Agency Contact Person. Proposers may if they wish request that written communications from DoITT be sent by e-mail, in lieu of hard copy, to an e-mail address specified by the proposer (a form for such request is attached hereto as Exhibit E).

SECTION 12. STANDARD TELECOMMUNICATIONS FRANCHISE RFP LANGUAGE.

Notwithstanding anything to the contrary in this RFP, no entity that submits a proposal in response to this RFP shall be refused a franchise of the type described in this RFP for a reason, or on a basis, which the City is preempted from using as a reason or basis for refusing the grant of such a franchise pursuant to federal law. The inclusion of this paragraph in any RFP soliciting franchise proposals is not intended to represent any concession or agreement by DoITT or the City that any particular federal law is applicable to the RFP generally, to the type of franchise that is the subject of the RFP or to any specific provision of such RFP.

SECTION 13. FUTURE SOLICITATIONS

In the event that an Existing Franchisee petitions the City seeking an amendment to its Existing Franchise, the City may issue a subsequent RFP allowing all Existing Franchisees the opportunity to request a similar amendment to its franchise. Such a solicitation would also invite proposals from any entity seeking to obtain a franchise generally comparable to the Existing Franchises.

EXHIBIT A

**NEW YORK CITY COUNCIL RESOLUTION NUMBER 191,
ADOPTED 8/25/10**

**THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 191**

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

By the Committee on Rules (by request of the Mayor)

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

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

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

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

The Council hereby resolves that:

- A. The Council authorizes the Department of Information Technology and Telecommunications to grant non-exclusive franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City to be used in providing mobile

telecommunications services in the City of New York.

- B. For purposes of this resolution, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter.
- C. For purposes of this resolution, "mobile telecommunications services" shall mean any "mobile service", as defined in Section 153 of Title 47 of the United States Code, and other voice and/or data communications or information services employing electromagnetic waves propagated through space to serve portable sending and/or receiving equipment.
- D. The public services to be provided under such franchises shall be mobile telecommunications services.
- E. The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the "Expiration Date"). No franchises shall be approved pursuant to this resolution by the Department of Information Technology and Telecommunications, the Franchise and Concession Review Committee, or the Mayor pursuant to this resolution after the Expiration Date.
- F. Prior to the grant of any such franchise, a Request For Proposals ("RFP") or other solicitation shall be issued by the Department of Information Technology and Telecommunications. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with City Environmental Quality Review ("CEQR") and Section 197-c of the Charter. The distribution list for each such RFP or other solicitation shall include, without limitation, certified minority owned business enterprises and certified women owned business enterprises as defined in Section 1304 of the City Charter. The criteria to be used by the Department of Information Technology and Telecommunications to evaluate responses to such RFPs or other solicitations shall include, but not be limited to, the following to the extent permitted by law:
 - (1) the adequacy of the proposed compensation (which may include monetary and/or in-kind compensation, as provided in the applicable RFP or other solicitation) to be paid to the City for the use of City property;
 - (2) the ability of the respondent(s) to maintain the property of the City in good condition throughout the term of the franchise;
 - (3) the consistency of the response(s) to the City's management of local rights-of-way activities, plans and goals.

In no event, however, shall the Department of Information Technology and Telecommunications include any criteria in any such RFP or other solicitation which

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

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

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

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

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

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

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

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

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

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

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

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

- (11) there shall be provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City;
- (12) there shall be remedies to protect the City's interest in the event of the franchisee's failure to comply with the terms and conditions of the agreement;
- (13) all franchisees shall be subject to review under the City's Vendor Information Exchange System ("VENDEX");
- (14) franchisees shall be required to hold any applicable licenses and permits required by the New York State Public Service Commission and the Federal Communications Commission;
- (15) there shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to the franchise;
- (16) there shall be provisions requiring the franchisee to protect the property of the City, and the delivery of public services that utilize the property of the City, from damage or interruption of operation resulting from the construction, operation, maintenance, repair or removal of facilities, equipment or other improvements related to the franchise;
- (17) there shall be provisions designed to minimize the extent to which the public use of the streets of the City are disrupted in connection with the construction of improvements relating to the franchise;
- (18) there shall be provisions requiring that prior to installation of a wireless antenna on any pole (whether City or utility-owned) on a City street which pole is less than ten (10) feet from an existing building, DoITT will provide not less than fifteen (15) business days notice of, and opportunity to submit written comment regarding, such proposed installation to the Community Board in whose community district such building lies (for purposes of this provision, the distance from a pole to a building shall be measured by the distance from the base of the pole facing the building to the building line);
- (19) there shall be provisions that offer incentives to the franchisee to serve areas beyond the core business districts of Manhattan south of 96th Street
- (20) there shall be provisions requiring the franchisee to (i) comply, on an on-going basis, with respect to any facilities installed by the franchisee within the City's public rights-of-way, with FCC maximum permitted levels of radio frequency energy exposure (calculated on an aggregate basis

with any other radio frequency energy emitters that may be present), (ii) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of such facilities (taking into account the actual conditions of human proximity to such facilities), and (iii) at the direction of the City, pay the costs of testing such facilities for compliance with the preceding clauses (i) and (ii); and

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

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

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

(2) simultaneously with each notice to an applicable Community Board pursuant to Section G.(18) above, a copy of such notice shall be sent to the City Council member in whose Council district the building that is the subject of such notice lies;

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

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

EXHIBIT B

Appendix A of Franchise Agreements Executed in 2012

I. Design of Base Station Equipment

(A) Permitted Components and Size Of Base Station Equipment. Facilities to be installed on Street Poles pursuant to this Agreement are permitted to be comprised of one, two or all three of the following elements, which shall be consistent the following design parameters:

Element (1): Equipment Housings. One equipment housing (which may enclose, incorporate or consist of one or more than one antenna of any type, or other form of equipment) within either of the two following size parameters:

(a) An equipment housing with a volume no greater than 2.8 cubic feet (i.e., 4,840 cubic inches). Equipment housings that are of a volume no greater than 2.8 cubic feet, but that are not “sub-sized housings” under subsection (b) below are referred to in this Agreement as “standard housings”. Standard housings shall have a maximum width (i.e., a maximum horizontal dimension, perpendicular to the pole and parallel to the ground) of eighteen inches unless a substantial operational need for a larger width is demonstrated to the satisfaction of DoITT and the City’s Department of City Planning (“DCP”). Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine.

(b) An equipment housing with maximum dimensions of 13 inches by 9 inches by 4 inches (that is, no more than thirteen inches in its longest dimension, nine inches in its second longest dimension and four inches in its shortest dimension). Equipment housings complying with this subsection (b) are referred to in this Agreement as “sub-sized housings”.

Equipment housings installed pursuant to this Agreement shall be sub-sized housings unless an operational need for a standard housing is demonstrated to DoITT’s satisfaction. Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine.

Element (2): Stick-Type Antennas. Up to two stick-type antennas, each no more than two inches in diameter and extending no more than thirty-six inches in length, extending vertically (either up or down) from a base either at the top of the pole or on the related equipment housing; provided that where such equipment is installed on "bishop's crook" design SLPs and located within the "limit zone" defined in Section I.(B)(3) of this Appendix A below, such antennas must be attached to the equipment housing and not extend more than one foot above the limit zone or the widest part of the flared decorative element directly above the limit zone, whichever is shorter, or the start of the flared decorative element below the limit zone, unless an exemption to these height restrictions has been made by DCP and DoITT upon the determination that the antenna designs are inconspicuous.

Element (3) Interconnecting Wiring/Cabling: Wire or cable interconnecting the above elements with each other and with underground power and/or other supporting utility facilities (in areas of the City where such utility facilities are located above ground, then such wire interconnection shall be permitted to connect to such above ground facilities), with as much of such wire or cable being located inside the Street Pole, rather than externally, as practicable.

(B) Permitted Location and Orientation on Pole of Base Station Equipment.

(1) Unless otherwise specifically permitted by the City, all equipment on a Street Pole will be located on the vertical shaft portion of the pole (that is, unless otherwise specifically permitted by the City, no equipment will be located on the horizontal portion or "arm" of the Street Pole) and equipment housings shall be oriented vertically so that the largest dimension is the height. Notwithstanding the preceding sentence however sub-sized housings and equipment related thereto may be located at the top of the curved arm of an SLP with a cobra-head fixture (immediately adjacent to the luminaire itself) or at the junction of the curved arm and the vertical portion of the pole. (if, pursuant to this sentence, housings are located on a horizontal "arm", such housings shall be oriented so that their largest dimension is also horizontal).

(2) On TLPs with signal "arms," housings shall be located in the "arm zone" (the "arm zone" is defined as the portion of the pole above the curved "arm" and below the short cross bar carrying the tension rods supporting the "arm"). Where a housing, the dimensions of which comply with the dimensional requirements of this Agreement, is longer than the "arm zone", the requirement that such housing be located within said arm zone shall be met if the housing is located such that it runs the full length of the arm zone with a minimum of any additional length stretching above or below the arm zone. On TLPs without signal "arms," and on SLPs, housings shall be located (except as expressly permitted by the City) in an area no lower than fifteen feet above curb level (except that sub-sized

housings may be located as described in the final sentence of the preceding subsection (1) even if such location would be inconsistent with such height requirement).

(3) Notwithstanding anything to the contrary in this subsection (c), any facilities located on “bishop’s crook” design SLPs shall be installed only within the “limit zone”, defined as a four foot zone of minimal or no decoration generally located on such poles from about fifteen feet above street level to about nineteen feet above street level.

(C) Permitted Visual Appearance of Equipment Housing.

(1) Each equipment housing must be painted the same color as the pole on which it is sited.

(2) No writing, symbol, logo or other such graphic representation that is visible from the street or sidewalk shall appear on any exterior surface of an equipment housing.

(3) If the City adopts a new design or designs for Street Poles (the parties understand that as of the date of Execution Date, the City is conducting a design competition soliciting proposed new designs for Street Poles, such competition being known as the “City Lights” design competition), the Company will use an appropriate enclosure for any equipment boxes to be located on such newly designed Street Poles which enclosure shall be esthetically consistent with such new design or designs, and the Company will cooperate with the City in the City’s replacement of old with new pole structures, including the Company cooperating to temporarily remove equipment on a Street Pole during any transition of such Street Pole to a newly designed version. During any such transition period the Company shall be entitled to an abatement of Street Pole Compensation applicable to such Street Pole for the period from the date the Company’s equipment is removed from a Street Pole until such equipment is installed on a replacement or alternative Street Pole.

(D) Permitted Weight of Base Station Equipment. All equipment to be installed on a Street Pole must be of a weight no greater than that compatible with the capacity of the pole to safely and securely support such equipment.

(E) Review Requirements for Design and Installation of Base Station Equipment on Street Poles.

(1) Installation of equipment on Street Poles pursuant to this Agreement shall be subject to the City’s right to review and approve the final design and appearance of all equipment to:

(a) ensure compliance with all applicable laws, rules and regulations of the City (including but not limited to those specific requirements described below),

(b) ensure public safety, the integrity of City facilities and non-interference with pedestrians and vehicular traffic, and

(c) ensure esthetic consistency with the Street Poles to which the equipment will be attached (including signage and other items or matter that may be located on such Street Poles) and the surrounding context.

(2) In addition to the general requirement that installations on Street Poles are subject to City review for compliance with all applicable laws, rules and regulations of the City, the following specific approval requirements shall be applicable to Street Poles installations:

(a) Installation of Base Stations on Street Poles shall be subject to approval by the City's Art Commission of the design of the Company's proposed form of Base Station installation, as provided in Section 854 of the City Charter.

(b) Approval of installations within "historic districts" as defined in Section 25-302 of the City Code are subject to prior review by the City Landmarks Preservation Commission pursuant to Section 25-318 of the City Code, and no approval for such installation shall be effective unless and until a report as described in said Section 25-318 is received.

(c) Installation within business improvement districts or special assessment districts is subject to rights the applicable district management association (or similar entity) may have, if any (which rights shall be in addition to and not in lieu of the rights of the City to full compliance with this Agreement in all respects).

(d) Approval of installations within City parks shall be subject to prior review by DoITT in consultation with the City Department of Parks and Recreation, and no approval for such installation shall be effective unless and until DoITT, in consultation with the City Department of Parks and Recreation, has reviewed and approved the proposed installation.

(e) Installation equipment on specially designed poles (for example, without limitation, poles specially designed for historic districts or business improvement districts) may, at the City's discretion, be required to modify otherwise permitted equipment designs for consistency with special pole designs.

- (F) Power Supply. The Company will be solely responsible for obtaining and paying all costs for electrical power for its equipment. The Company shall either (1) obtain the written agreement of the electrical power provider that such provider will not look to the City for payment of such costs of electrical power even if the Company fails to pay such costs, or (2) deposit an additional amount into the Security Fund for each Base Station it installs equal to one year of reasonably estimated charges for electrical power to such Base Station (the City and the Company to reasonably agree on such reasonably estimated charges prior to installation of such Base Station). In any event, Base Station equipment must be designed so that power usage by the Base Station can be shut off remotely, without climbing up to the antenna or equipment box.
- (G) Radio Frequency Energy Exposure Limits. The Company shall, with respect to all the Facilities installed on, over or under the Inalienable Property, (1) comply on an on-going basis with FCC maximum permitted levels of radio frequency energy exposure (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), (2) comply with all FCC rules and requirements, regarding the protection of health and safety with respect to radio frequency energy exposure, in the operation and maintenance of such Facilities (taking into account the actual conditions of human proximity to Base Stations on Street Poles), and (3) and at the direction of the City, pay the costs of testing such Facilities for compliance with the preceding clauses (1) and (2), which testing may be directed by the City from time to time and which is to be conducted by independent experts selected by the City after consultation with the Company and which testing shall be conducted in accordance with the FCC's OET (Office of Engineering and Technology) Bulletin 65 (or a successor thereto) unless the City reasonably determines that alternative testing procedures that reflect sound engineering practice are appropriate.
- (H) Street Utility Poles. Notwithstanding anything to the contrary in the preceding subsections (A), (B) and (C) of this Section I., the design and location of Facilities on Street Utility poles shall be consistent with the provisions of said subsection (A), (B) and (C) to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable pre-existing utility uses.

II. Location and Number of Pole Sites

(A) Location Requirements.

Street Poles will only be available pursuant to this Agreement in accordance with the following provisions:

- (1) No more than one Base Station, in total, is permitted on a Street Pole pursuant to this Agreement and the other Street Pole Agreements, so that once a Street Pole becomes a Reserved Pole

reserved to a Street Pole Franchisee (see Section II.(B)(1)(b) of this Appendix A) such Street Pole is not available for use by any other Street Pole Franchisee as long as such Street Pole remains a Reserved Pole.

(2) Base Station installations on Street Poles will only be permitted on SLPs and Street Utility Poles if such SLPs or Street Utility Poles are located within intersections, except that such base stations may be placed on SLPs located other than within intersections upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such placement at non-intersection sites (in the event of such approved location at non-intersection sites, only sub-sized housings will be placed at such non-intersection sites unless there is a further demonstration to the satisfaction of DoITT and DCP that there is an operational need for standard housings at such sites). Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence (including the parenthetical sentence therein) may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine. For purposes of this subsection (2) and the following subsection (3), a Street Pole shall be “within an intersection” if any part of the base of the Street Pole is ten (10) yards or less from two different street beds or at a comparable location at the conjunction of two (2) streets.

(3) Base Stations will be permitted on SLP sites within an intersection only up to the number which leaves two SLP sites within such intersection without any Base Stations installed by Street Pole Franchisees (including the Company), and thus available for future potential use for purposes to be determined by the City, except that such Base Stations may be permitted at locations which reduce below two the number of SLPs within an intersection left without such Base Stations upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such siting. Any determination of satisfaction by DoITT and DCP pursuant to the preceding sentence may be in the form of an approval of a specific Street Pole use proposal or may be made in more generic form covering all or a category of Street Poles or potential installations, as DoITT and DCP may determine.

(4) Due to City operational needs, TLPs on which a traffic signal controller box is located (usually one pole per intersection with a traffic light) are not available for use by the Company for Base Stations.

(5) Base Station installations on Street Poles will only be permitted on TLPs that support a signal “arm” reaching into the roadbed, except that if at an intersection there are no TLPs with such a signal arm, then up to two TLPs without signal arms may be used for Base Stations at such intersection.

(6) Base Stations installed on Street Poles pursuant to this Agreement shall be placed, located and operated so as not to interfere with public safety or traffic operations or any other City, state or federal government operations. The Company agrees to remove any Base Station that is operating inconsistently with this subsection (6) if such inconsistency cannot be immediately cured.

(7) Base Stations installed on Street Poles pursuant to this Agreement shall be placed, located and operated by the Company so as not to illegally interfere with the operation of Base Stations of other Street Pole Franchisees or other radio frequency spectrum users generally. The City shall, to the extent permitted, require the foregoing clause to be placed in all Street Pole Franchises granted now or during the Term. The Company recognizes, however, that the City is not a guarantor of, nor is it obligated to the Company to enforce, the Company's freedom from radio frequency interference that may affect the Company's Base Stations. Even if the City has some authority as a site location provider to act against such interference, and the City may choose to exercise such authority in any particular instance, the Company hereby recognizes and agrees that the City shall have no legal or contractual obligation to the Company to exercise such authority.

(8) The highway sign supports (HSSPs) available for use for installation of Base Stations shall be limited to those located on limited access highways (and only those limited access highways which are part of the Inalienable Property) and only those supports that support signs which fully traverse the traffic lanes of the highway in at least one traffic direction. Supports for other types of signs (such as roadside traffic signs) shall not be used unless specifically authorized in writing by the City.

(9) This Agreement does not authorize the placement of Base Stations on sites, structures or facilities other than SLPs, TLPs, HSSPs, and Street Utility Poles except as such placement may be expressly authorized by DoITT and DOT pursuant to procedures established by DoITT and DOT. The City reserves the right to grant, at any time, to any party, upon terms and conditions determined by the City in its discretion, rights to place such equipment on other sites (such as City buildings) or other types of street facilities, equipment or furniture.

(10) The City reserves the right at any time to waive any of the above restrictions (or other restrictions in this Agreement), with or without conditions, in its discretion.

(11) Street Utility Poles. Notwithstanding anything to the contrary in the preceding subsections (1) and (2) of this Section II.(A)., the location of Facilities on Street Utility Poles shall be consistent with the provisions of said subsections (1) and (2) to the maximum extent permitted by safety, legal and use requirements associated with the use of such poles for the applicable pre-existing utility uses.

(B) Allocation of Street Operations Pole Sites Among Street Pole Franchisees.

The Company shall not install any facilities or equipment on any Street Operations Pole unless and until such Street Operations Pole has been reserved for the Company under this subsection (B).

(1) New Reservation Phases.

(a) From time to time the City will notify the Company and all other Street Pole Franchisees of the opening of a “New Reservation Phase”. Not later than thirty (30) days after such notice, the Street Pole Franchisee that is the highest on the Priority List for each Zone may post, in a manner accessible to the City and the other Street Pole Franchisees

¹, a list, for each Zone in which such Street Pole Franchisee is the highest on the Priority List, of Street Operations Poles in such Zone on which such Street Pole Franchisee seeks to site Base Stations (such list to include no more than the maximum number of proposed Street Operations Pole sites than is permitted under whichever is applicable of subsections II.(B)(1)(c),(d), (e) or (f) below), which list may not include any Reserved Poles². Upon the posting of such list (such posting referred to herein as a “Reservation Notice”), the Street Operations Poles on such list shall become Reserved Poles, reserved to the Street Pole Franchisee that posted the list. Not later than thirty (30) days after the earlier of (i) posting of such Reservation Notice with respect to any particular Zone, or (ii) the expiration of the time period for the posting of such Reservation Notice, the Street Pole Franchisee that is second on the Priority List for such Zone may submit its own Reservation Notice, such list again to include no more than the maximum number of proposed Street Operations Pole sites than is permitted under whichever is applicable of subsections II.(B)(1)(c),(d), (e) or (f) below, and such list not to include any Reserved Poles. Thereafter, not later than thirty (30) days after each posting of a Reservation Notice (or if earlier, the expiration of the time period for the posting of such Reservation Notice) with respect to any particular Zone, the Street Pole Franchisee next on the Priority List for that Zone may submit its own Reservation Notice, in each case not to exceed the maximum permitted number of proposed sites under whichever is applicable of subsections II.(B)(1)(c),(d), (e) or (f) below and in each case not to include any Reserved Poles. Such process will be repeated until each Street Pole Franchisees has had the opportunity to submit a Reservation Notice with respect to each Zone in its Franchise Area. On the date that all Street Pole Franchisees have filed a Reservation Notice for all Zones in their Franchise Areas, or the opportunity to file such a

¹ Such forum may be an e-mail list, a password accessible web site, an overnight mail delivery to all members of a mailing list, or other system, as chosen by the City after consultation with the Street Pole Franchisees.

² During new reservation phases, there will be no Reserved Poles in a Zone until the Street Pole Franchisee that is highest on the Priority List for such Zone posts its list for such Zone.

Reservation Notice has expired, the particular New Reservation Phase shall be considered completed.

(b) A “Reserved Pole” reserved to a particular Street Pole Franchisee is a Street Operations Pole (i) that has been reserved, pursuant to the procedures described in this Appendix A, to that Street Pole Franchisee for installation of a Base Station thereon, and (ii) with respect to which no event has occurred which is described in subsection (3) below of this Section I.(B). When the term “Reserved Pole” is used generally rather than with specific reference to being reserved to a particular Street Pole Franchisee, it is intended to refer to Reserved Poles reserved to any Street Pole Franchisee.

(c) Upon the Commencement of each New Reservation Phase, the City shall set a “Maximum Per-Zone Number” applicable to that New Reservation Phase and a “Maximum Per-Phase Number” applicable to that New Reservation Phase.

(d) During each New Reservation Phase to occur during the Term, the Company (and each of the other Street Pole Franchisees) shall include no more than the applicable Maximum Per-Zone Number of Street Operations Poles on any Reservation Notice for any Zone, and no more than the applicable Maximum Per-Phase Number of Street Operations Poles in total on all its Reservations Notices posted during such first New Reservation Phase.³

(e) During subsequent New Reservation Phases that occur during the Term, Reservation Notice limits to which the Company is subject during the subsequent New Reservation Phases shall be in addition to (i.e., they shall not be reduced by) the number of Reserved Poles reserved to the Company from the previous New Reservation Phase, but only if the Company has completed installation of Base Stations on such Reserved Poles. If the Company has Reserved Poles from the previous New Reservation Phase with respect to which it has not completed installation of Base Stations, then for each such Reserved Pole with respect to which installation is not complete, the zone and phase reservation limits for the applicable subsequent New Reservation Phase shall be reduced by one.

³ Thus, for example, if (as has been the case for reservation phases the City has conducted in the past under franchises comparable to this one), the Maximum Per-Zone Number for a particular New Reservation Phase is set by DoITT at 150 and the Maximum Per-Phase Number is set by DoITT at 300, then: Street Pole Franchisee X (with a Franchise Area that includes Zones A, B and C) may submit, during the first New Reservation Phase, Reservation Notices including, say, 150 Street Operations Poles in Zone A, 150 in Zone B and 0 in Zone C, or, as another example, 100 in Zone A, 100 in Zone B and 100 in Zone C, or any other variation as long as the total submitted by such Street Pole Franchisee adds up to no more than 300 and no Reservation Notice submitted by such Street Pole Franchisee for any one Zone includes more than 150 Street Operations Poles. As another, example (again using for this example the same 150 per zone and 300 per phase limits), Street Pole Franchisee Y (with a Franchise Area that includes only Zones B and C) may submit Reservation Notices with any number of Street Operations Poles up to 150 in a Zone B Reservation Notice and up to 150 in a Zone C Reservation Notice.

On the other hand, however, if the Company included a Street Operations Pole in a Reservation Notice during the previous New Reservation Phase, but the Company was unable (despite commercially reasonable efforts by the Company) to receive DOT's approval for using such Street Operations Pole to install a Base Station thereon, despite a reasonable expectation on the part of the Company, based on the terms of this Agreement and on publicly accessible information, that such Street Operations Pole would be approved by DOT for use to install a Base Station thereon, then (provided the Company has voluntarily terminated its reservation of such Street Operations Pole pursuant to Section II.(B)(2)(ii) below of this Appendix A) the zone and phase reservation limits applicable to the Company during the subsequent New Reservation Phase shall be increased by one.

(f) It is anticipated that the City will continue to administer New Reservation Phases in the same manner as described in subsections II.(B)(1)(a), (b), (c) and (d), and in each case in commencing each New Reservation Phase, the City will designate an appropriate Maximum Per-Zone Number and an appropriate Maximum Per-Phase Number setting the maximum number of Street Operations Poles that can be requested for reservation, during such New Reservation Phase, based on the reasonable determination of the City balancing the City's ability to monitor the installation process, the interest of the Street Pole Franchisees in building their Facilities promptly, and the appropriate treatment of Street Pole Franchisees with higher and lower places on the Priority List.

(2) Expiration of Reservation. The status of a Street Operations Pole as a Reserved Pole, reserved to a particular Street Pole Franchisee, shall expire upon the occurrence of the earliest to occur of the following:

(i) If the Street Pole Franchisee's Street Pole Franchise terminates, then the status as Reserved Poles of all Reserved Poles reserved to such Street Pole Franchisee shall expire upon such termination.

(ii) If no facilities of a Street Pole Franchisee are installed on a particular Reserved Pole that is reserved to such Street Pole Franchisee, said Street Pole Franchisee may at any time post to the City and the other Street Pole Franchisees (in a manner comparable to the manner of posting Reservation Notices) that it chooses to voluntarily surrender such Reserved Pole status, in which event such Reserved Pole status shall expire immediately on the City's receipt of such notice.

(iii) If a Base Station has not been fully installed and become operational on a Reserved Pole within one year of the posting of a Reservation Notice creating such reservation, then at such time as the City thereafter commences a further New Reservation Phase the City will notify Street Pole Franchisees that such Reserved Pole's treatment as reserved is subject to inclusion on new Reservation Notices. (The one-year period set forth in the preceding sentence shall be subject to

extension for Unavoidable Delays in the applicable Base Station installation.) Immediately upon the posting of a Reservation Notice, in connection with such further New Reservation Phase, reserving such Street Operations Pole, the status of such Street Operations Pole as a Reserved Pole reserved to the original reserving Street Pole Franchisee will be deemed expired and such Street Operations Pole will be treated as a Reserved Pole reserved to the newly reserving Street Pole Franchisee.⁴

(iv) If a Base Station becomes non-operational after initially becoming operational and is not restored to operability within sixty (60) days of becoming non-operational, or if a Base Station recurrently becomes non-operational in a manner that, despite repeated restoration of operability within the required time period, suggests that the Base Station is not being significantly relied on for the provision of service, then the Reserved Pole status of such Street Operations Pole shall expire thirty (30) days after notice from the City of such expiration.⁵

(v) If after posting a Reservation Notice, the Company fails within 30 days of such posting to pay the City, for deposit into the Security Fund, such amount as is necessary to meet the requirements of Appendix C of this Agreement in a manner reflecting the addition of such Reserved Poles as are reserved pursuant to such Reservation Notice, then that number of Reserved Poles reserved by such Reservation Notice shall have their Reserved Pole status expire as is necessary to reduce the Company's Security Fund obligation under Appendix C hereof to its actual amount.⁶

⁴ If no Street Pole Franchisee requests such Street Operations Pole during a New Reservation Phase as described in this subsection (iii), such Street Operations Pole's status as a Reserved Pole shall continue (unless it otherwise expires under subsections (i), (ii) or (iv) of this subsection (3)) but failure to complete installation and notify the City of such completion by the next successive New Reservation Phase shall again expose such Street Operations Pole to potential reservation by others as provided in this subsection (iii).

⁵ The intention of this subsection (iv) is to allow Reserved Poles that are not fulfilling the intended purpose of providing service to be made available to other Street Pole Franchisees who may be interested in using such Street Operations Pole for provision of service. This subsection (iv) is not intended to cause the expiration of Reserved Pole status for Base Stations which are installed for the specific purpose of providing service only on occasions of unusual demand or specific need, and which are intentionally out of service for extended periods in a manner consistent with such limited use goals. Such limited use Facilities shall not be considered as "non-operational" for purposes of this subsection (iv) so long as they are operational when placed in service for their intended, occasional use and so long as the number of such limited use installations shall not be installed on more than 10% of the Company's Reserved Poles and so long as the Company, upon written request of the City, provides an annual list to the City of such limited use installations on Reserved Poles.

⁶ Where some but not all Reserved Poles are not sufficiently funded as required by Appendix C hereof within said thirty (30) day period and are therefore subject to expiration of their Reserved Pole status under this subsection, it shall be in the City's discretion to select which of said Reserved Poles to designate as having their Reserved Pole status expire.

(3) Temporary or Permanent Replacement Reservation. In the event that a Street Operations Pole, on which the Company has placed a Base Station in accordance with the provisions of this Agreement, temporarily or permanently is rendered substantially unusable for the purpose intended under this Agreement (for reasons unrelated to the Company and its operations because, for example, the City has removed the Street Operations Pole, temporarily or permanently), the City will cooperate reasonably with the Company to attempt to locate an alternative Street Operations Pole (which is not otherwise a Reserved Pole reserved to the Company or any other Street Pole Franchisee) that can serve as an alternative location for the Base Station which was installed at such newly unavailable Street Operations Pole. If the City and the Company reach an agreement on such an alternative Street Operations Pole, the City shall designate such Street Operations Pole a Reserved Pole reserved to the Company, such Reservation Pole status to end when and if the original Reserved Pole is restored as an available site or, if earlier, when such status as a Reserved Pole would otherwise end pursuant to the preceding subsection (2) (provided that if the City and the Company agree that it would be more appropriate to keep an installed Base Station at its new location rather than moving it again, back to its original location, then the new location will be deemed to be the applicable Reserved Pole going forward, as if it had been the original Reserved Pole, and the original Reserved Pole's status as reserved will be terminated). During any period that a Reserved Pole on which the Company has placed a Base Station in accordance with the provisions of this Agreement becomes (for reasons unrelated to the Company and its operations) unavailable for location of a Base Station, any compensation to the City due under Section II. of Appendix D attributed to such Street Operations Pole shall be abated in full, provided that for the period that an alternative Street Operations Pole becomes designated as a Reserved Pole as described in this subsection (4), then compensation will be due with respect to such alternative location, calculated pursuant to Section II. of Appendix D.

(4) Reasonable Revision of Allocation Procedures. If DoITT, acting reasonably, determines at any time that all or any part of the Street Operations Pole Allocation procedures set forth in this Section II. are proving in practice to be substantially failing to fulfill the purposes for which such procedures were intended, DoITT may, after consultation with all Street Pole Franchisees, issue revised procedures fairly structured to better fulfill such purposes.

(5) If a New Reservation Phase is in process at the time this Agreement first becomes effective, the Company may participate in such New Reservation Phase in its applicable place in order with respect to each applicable zone (or if its place in such order has already passed, then at the next place in order after this Agreement becomes effective).

(C) Allocation of Street Utility Pole Sites Among Street Pole Franchisees

Allocation of Street Utility Poles shall be pursuant to procedures of the utility company owner or owners of the applicable poles. Said Street Utility Pole

owner's written approval for Company's use of Street Utility Poles shall be provided to the City prior to the installation of Facilities on Street Utility Poles.

III. Transfer of Street Operations Pole Reservations Among Street Pole Franchisees.

The City recognizes that in the ordinary course of business, the Company and other Street Pole Franchisees may, during the course of implementing the Street Pole Franchises, enter into arrangements to utilize services from one another's Facilities (indeed, the City recognizes that it is the expressly contemplated business plan of several of the Street Pole Franchisees to sell capacity on, or service from, their Facilities to cellular and/or personal communications service providers, which class may include certain other Street Pole Franchisees). It is not the intention of this Agreement to limit or restrict the ability of the Company and other Street Pole Franchisees to, in the ordinary course of their business, buy or sell capacity on, or service from, Facilities installed pursuant to this Agreement and other Street Pole Franchise Agreements. Furthermore, it is not the City's intention to prohibit in this Agreement cooperation among Street Pole Franchisees to identify Street Operations Poles where such cooperation would promote the ability of each of the cooperating Street Pole Franchisees to reserve sufficient Street Operations Poles at sufficiently appropriate locations to meet its service goals, in a manner that minimizes incompatible demands for site reservations in any New Reservation Phase. The parties note, in this regard, that because priority positions in the event of conflicting demand for individual sites have previously been determined, as part of the RFP process, and the compensation the City will receive from each Company for each site in each Zone has been established as part of the completed RFP process, the City is not prejudiced from a compensation point of view by Street Pole Franchisees cooperating among themselves to minimize conflicting reservation requests for individual Street Operations Pole sites (such conflicting requests do not increase the potential for compensation to the City in the way they might if individual Street Operations Pole reservations were auctioned on a site-by-site basis). However, it is *not* the intention of the parties to this Agreement that Street Pole Franchisees be permitted to collude to reduce franchise compensation payments to the City by arranging, for example, for one Street Pole Franchisee to use Reserved Poles reserved to a second Street Pole Franchisee for installation of Facilities that are not bona fide facilities of the second Street Pole Franchisee.⁷ Such non-permitted collusion shall be considered a default of the Street Pole Franchise Agreements of all colluding parties, including, if it involves the Company, of this Agreement. Further, it is not intended as a general matter that the reservation of individual Street Operations Poles is to be a transferable right to be transferred among Street Pole Franchisees. If a Street Pole Franchisee chooses not to use

⁷ For example, Street Pole Franchisee A, which purchased a higher priority in the reservation process by agreeing to pay a higher per Street Operations Pole compensation, may not solicit Street Pole Franchisee B, which has agreed to pay the City a lesser amount in per Street Operations Pole compensation, to submit requests for reservations in the name of B but which will actually be used by A.

a Reserved Pole reserved to it for actual installation of a Base Station, or to terminate its installation on a Reserved Pole, the general procedure intended hereunder is that the Street Pole Franchisee invoke the provisions regarding voluntary termination of a reservation (under Section II.(B)(2)(ii) of this Appendix A), after which the affected Street Operations Pole would become available for others to seek to reserve during the next New Reservation Phase. However, DoITT reserves the right to approve individual transfers of reservations on a case-by-case basis if the public interest would be served by the specific proposed transfer.

IV. Option To Expand Franchise Area; Waiver

(A) Any Street Pole Franchisee with a Franchise Area that includes only Zone C shall have the option, once a year during the Term, to expand such area to include either Zone B, or both Zone B and Zone A, and any Street Pole Franchisee with a Franchise Area that includes only Zones B and C shall have the option, once a year during the Term, to expand such area to include Zone A, provided that:

(1) such Street Pole Franchisee provides notice to the City of its exercise of such option not earlier than one hundred twenty (120) days, but not later than sixty (60) days, prior to each anniversary of the Effective Date, with such expansion to become effective on that anniversary of the Effective Date which occurs immediately after said notice;

(2) such Street Pole Franchisee agrees to an adjustment in the franchise compensation due under Section I. of Appendix D of this Agreement to match, commencing on the day such Franchise Area expansion becomes effective and thereafter going forward, the compensation payable by other Street Pole Franchisees with comparable Franchises Areas (any applicable increase in Zone Compensation to be payable on the date such expansion becomes effective);

(3) such Street Pole Franchisee agrees to an adjustment of the Security Fund obligations under this Agreement to match the Security Fund obligations of other Street Pole Franchisees with comparable Franchises Areas (any applicable increase in such Security Fund obligations to be payable on the date such expansion becomes effective);

(4) such Street Pole Franchisee agrees that it shall, with respect to the newly added Zone or Zones, take a place lower on the Priority List than any Street Pole Franchisee that previously had such Zone or Zones within its Franchise Area; and

(5) such Street Pole Franchisee agrees to pay compensation per Compensation Street Pole, within the newly added Zone or Zones, under Section II. of Appendix D hereof, which matches the amount paid with respect to such

Zone or Zones by the Street Pole Franchisee which was previously the lowest on the Priority List with respect to the newly added Zone or Zones.

(B) The City reserves the right to waive any requirement imposed on the Company or other Street Pole Franchisees pursuant to this Appendix A, provided that the City agrees not to waive any requirement with respect to one or more Street Pole Franchisees that would unfairly and adversely affect the Company's pole allocation priority as set forth on the Priority List. The City agrees that, to the maximum extent permitted by law, if it grants additional Street Pole Franchises in addition to those expressly listed on the Priority List, any Street Pole reservation priority rights that are provided under any such subsequent Street Pole Franchisee shall be lower in priority rank than those expressly listed on the Priority List.

V. Total Maximum Number of Poles Per Street Pole Franchisee; Merger of Street Pole Franchises.

(A) At no time shall the Company have Base Station facilities on more than three thousand (3000) Street Poles in total throughout the Franchise Area, unless the City agrees to an increase in such maximum number. Once the Companies total number of reservations of Street Operation Poles plus Utility Company approved Street Utility Poles reaches 3000 cumulatively, The Company shall not be permitted to reserve Street Operation Poles if reserving such Street Operations Poles would have the effect of providing the Company rights to place equipment on more than 3000 Street Poles. In addition DoITT will inform the owner of the Street Utility Pole that the Company is at the 3000 Street Pole limit and no longer has City approval to install equipment on any Street Poles.

(B) In the event that a transaction occurs involving two Street Pole Franchises such that one of the Street Pole Franchises involved in such transaction remains in effect and the other does not (with one of the two Street Pole Franchisees seeking to continue to occupy sites or seek future reservations pursuant to the eliminated franchise), for example an assignment the result of which is a consolidation of two franchises into one, then as provided in Section 9.6(b)(v) of this Agreement, the surviving Street Pole Franchisee shall be obligated to pay Zone Compensation and Street Pole Compensation as if both of the Street Pole Franchises continued in effect (and the Zone Compensation under the surviving Street Pole Franchise shall be deemed increased to reflect such obligation), and the reservation priority system and maximum number of poles provisions of this Appendix A shall also be applied as if the surviving Street Pole Franchisee continued to hold the rights that were held under the no longer surviving Street Pole Franchise. Thus, for example, if the Street Pole Franchisees holding third and fifth priorities in Zone C were to undertake a consolidation transaction in which only the third priority Street Pole Franchise survives, and the third priority Street Pole Franchisee seeks to continue to exercise rights previously exercised by the eliminated franchise, then (i) the third

priority Street Pole Franchise would be deemed to provide for a greater Zone Compensation, equal to the sum of the Zone Compensation under both Street Pole Franchises, (ii) the third priority Street Pole Franchisee would be entitled to maintain Base Stations on those Street Operations Poles the fifth priority Street Pole franchisee had been entitled to maintain, (iii) in each New Reservation Phase, the third priority Street Pole Franchisee would be entitled to submit a Reservation Notice in both the third priority reservation spot and the fifth priority reservation spot, and (iv) the total permitted installation limit pursuant to the preceding paragraph (A) would be one set of three thousand attributable to third priority selections plus a second set of three thousand attributable to fifth priority selections.

REQUEST FOR PROPOSALS FOR FRANCHISES FOR THE INSTALLATION AND USE, ON CITY-OWNED STREET LIGHT POLES, TRAFFIC LIGHT POLES AND HIGHWAY SIGN SUPPORT POLES AND PRIVATELY OWNED UTILITY POLES, OF TELECOMMUNICATIONS EQUIPMENT AND FACILITIES, INCLUDING BASE STATION AND ACCESS POINT FACILITIES, IN CONNECTION WITH THE PROVISION OF MOBILE TELECOMMUNICATIONS SERVICES

EXHIBIT C
ACKNOWLEDGMENT OF RELEASE DATE AND ADDENDUM

APPLICANT'S NAME: _____

RFP RELEASE DATE: _____

NUMBER OF ADDENDA RECEIVED: _____

ISSUE DATE(S) OF ADDENDA: _____

**EXHIBIT D
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.

* 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.

**EXHIBIT E
E-MAIL AUTHORIZATION FORM**

The RFP document and subsequent addenda can be accessed by logging onto the following web addresses:

<http://www.nyc.gov/html/doitt/html/business/business.shtml>

OR

DoITT's homepage: <http://www.nyc.gov/html/doitt/html/home/home.shtml>

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 RFP via e-mail. If DoITT does not have a company's e-mail address, they 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 websites.

If you wish to receive this RFP or addenda by hard copy mail, please provide the following information to the Agency Contact Person listed on the front of this RFP as soon as possible **via mail, e-mail or fax**. Hard copies of the RFP 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
(RFP, Addenda, both): _____

REQUEST FOR PROPOSALS FOR FRANCHISES FOR THE INSTALLATION AND USE, ON CITY-OWNED STREET LIGHT POLES, TRAFFIC LIGHT POLES AND HIGHWAY SIGN SUPPORT POLES AND PRIVATELY OWNED UTILITY POLES, OF TELECOMMUNICATIONS EQUIPMENT AND FACILITIES, INCLUDING BASE STATION AND ACCESS POINT FACILITIES, IN CONNECTION WITH THE PROVISION OF MOBILE TELECOMMUNICATIONS SERVICES

EXHIBIT F 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 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.