

PUBLIC NOTICE

NOTICE OF A FRANCHISE AND CONCESSION REVIEW COMMITTEE (“FCRC”) PUBLIC HEARING to be held remotely via a Microsoft Teams dial-in on Monday, June 12, 2023, commencing at 2:30 PM relating to: a proposed amendment to a coordinated street furniture franchise agreement (the “Agreement”) between the City of New York and JCDecaux Street Furniture New York, LLC (f/k/a Cemusa NY, LLC) (the “Company”) that will, among other things, extend the term of the Agreement by five years and incorporate additional rights and responsibilities, including, without limitation, an increase in the overall number of Bus Shelters and Automatic Public Toilets that the Company may install, maintain and operate, and the modification of certain revenue requirements applicable to the Company.

The public may participate in the public hearing by calling the dial-in number below. Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony must be received by June 12, 2023. In addition, the public may also testify during the hearing by calling the dial-in number. The dial-in information is below:

Dial-in #: +1 646-893-7101

Access Code: 609 518 801#

Press # on further prompts

A draft copy of the amendment may be obtained at no cost by any of the following ways:

- 1) Send a written request by e-mail to DOT at streetfurniture@dot.nyc.gov from May 19, 2023 to June 9, 2023.

2.) Send a written request by mail to Helen Morales, NYC Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041. Written requests must be received by May 26, 2023. For mail-in request, please include your name, return address, and reference the “JCDecaux Street Furniture Franchise Amendment”.

A transcript of the hearing will be posted on the FCRC website at

<https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>.

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor’s Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0734. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

RECOMMENDATION FOR APPROVAL OF FRANCHISE AMENDMENTS
MEMORANDUM

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

A. AUTHORIZING RESOLUTION (Attach copy)

1. Mayor's Office of Legislative Affairs transmitted proposed authorizing resolution to City Council on 08/09/2002.
2. City Council conducted public hearing on 09/17/2002, 10/29/2002, 07/22/2003, 7/21/2003, and 06/27/2003.
3. City Council adopted authorizing resolution on 8/19/2003.
4. Mayor's Office of Legislative Affairs transmitted proposed and amended authorizing resolution to City Council on 05/01/2023.
5. City Council conducted public hearing on 05/02/2023.
6. City Council adopted authorizing resolution on 05/11/2023.

B. SOLICITATION/EVALUATION/AWARD

1. RFP/solicitation document issued on 03/26/2004. (Attach copy)
2. The Agency certifies that it complied with all the procedures for the solicitation, evaluation and/or award of the subject franchise as set forth in the applicable authorizing resolution and request for proposals, if applicable.

Basis for Award:

Instructions: Check applicable box below; attach a list of proposed franchisee's Board of Directors.

- Recommended franchisee is highest rated proposer and offered highest amount of revenue (overall or for the competition pool).
- Recommended franchisee was sole proposer or was determined to be only responsive proposer (overall or for the competition pool), and the and agency certifies that a sufficient number of other entities had a reasonable opportunity to propose, the recommended franchisee meets the minimum requirements of the RFP or other solicitation and award is in the best interest of the City. *Explain:*
- The subject franchise is a non-exclusive franchise and the recommended franchisee has been determined to be both technically qualified and responsible.
- Other *Describe: This is a request for an approval of amendments to the franchise agreement between the City of New York, acting by and through the Department of Transportation of the City of New York, and JCDecaux Street Furniture New York, LLC.*

C. PUBLIC HEARING & APPROVAL

1. Agency filed proposed agreement with FCRC on 04/17/2006
2. Agency filed proposed franchise amendments with FCRC on 06/12/2023.
3. Public Hearing Notice
 - a. Agency published, for at least 15 business days immediately prior to the public hearing, a public hearing notice and summary of the terms and conditions of the proposed agreement in the City Record from 05/19/2023-06/09/2023
 - b. Agency provided written notice containing a summary of the terms and conditions of the proposed agreement to each affected CB, BP and Council Members by

05/25/2023 (Check the applicable box below and provide the requested information)

Franchise relates to property in one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___ / ___ / ___ and ___ / ___ / ___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___ / ___ / ___ and ___ / ___ / ___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___ / ___ / ___.

Franchise relates to property in more than one borough and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in amNewYork, a NYC daily, citywide newspaper on 05/25/2023 and 05/26/2023, and in The New York Daily News, also a NYC daily, citywide newspaper on 05/26/2023 and 05/27/2023. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by 05/25/2023.

Franchise relates to a bus route contained within one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___ / ___ / ___ and ___ / ___ / ___, and in _____, a NYC weekly, local newspaper published in the affected borough on ___ / ___ / ___ and ___ / ___ / ___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by ___ / ___ / ___.

Franchise relates to a bus route that crosses one or more borough boundaries and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in _____, a NYC daily, citywide newspaper on ___ / ___ / ___ and ___ / ___ / ___, and in _____, also a NYC daily, citywide newspaper on ___ / ___ / ___ and ___ / ___ / ___. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by ___ / ___ / ___. A notice was posted in the buses operating upon the applicable route.

b. Franchise relates to extension of the operating authority of a private bus company that receives a subsidy from the City and, as such, at least 1 business day prior to the public hearing the Agency published a public hearing notice in the City Record on ___ / ___ / ___.

4. FCRC conducted a public hearing within 30 days of filing on 06/12/2023.

RESOLUTION

FRANCHISE AND CONCESSION REVIEW COMMITTEE

CITY OF NEW YORK

Cal. No.1

In the matter of approval of proposed amendment to the franchise agreement between the City of New York (the “City”), acting by and through its Department of Transportation (“DOT”), and JCDecaux Street Furniture New York, LLC f/k/a Cemusa NY, LLC (“JCDecaux” or “Franchisee”), through which the City granted to JCDecaux a non-exclusive franchise providing the right and consent to (a) install, operate and maintain bus shelters, automatic public toilets, and public service structures and install and maintain newsstands on the inalienable property of the City, (b) sell and place advertising as set forth in the franchise agreement, and (c) derive revenue therefrom.

WHEREAS, pursuant to Authorizing Resolution 1004 (adopted by New York City Council on August 19, 2003), DOT issued a Request for Proposals (“RFP”) dated March 26, 2004, as modified by Addendum I, dated June 11, 2004, Addendum II, dated July 15, 2004, and Addendum III, dated August 18, 2004, inviting qualified entities to submit proposals for a twenty-year franchise for the installation, operation and maintenance of bus shelters, self-cleaning automatic public toilets, and public service structures and for the installation and maintenance of newsstands and for the display of advertising thereon subject to certain limitations in the boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, to serve with a coordinated design the needs of residents of, and visitors to, the City; and

WHEREAS, on May 15, 2006, a franchise agreement granted to Cemusa Inc. pursuant to the RFP was approved by the Franchise and Concession Review Committee (“FCRC”); and

WHEREAS, on June 26, 2006, Cemusa Inc. (now known as JC Decaux Street Furniture, Inc.) and the City acting by and through DOT entered into a franchise agreement for the Coordinated Street Furniture Franchise for the installation, operation and maintenance of bus shelters (“BSSs”), automatic public toilets (“APTs”), and public service structures and for installation and maintenance of newsstands (the “2006 Agreement”); and

WHEREAS, on September 20, 2007, Cemusa, Inc. assigned its interest in the 2006 Agreement to Cemusa NY, LLC (now known as JCDecaux Street Furniture New York, LLC), a wholly owned subsidiary thereof; and

WHEREAS, at a meeting held on September 30, 2015, the FCRC, acting in accordance with its customary procedures, voted on and approved a change in control of Cemusa NY, LLC, pursuant to which all shares of Cemusa, Inc. were transferred from CEMUSA-Corporación Europea de Mobiliario Urbano, S.A. to JCDecaux North America, Inc., together with certain other amendments to the 2006 Agreement; and

WHEREAS, on October 1, 2015, the Franchisee and the City, acting by and through DOT, entered into an Amended and Restated Agreement for the Coordinated Street Furniture Franchise (the “2015 Agreement”); and

WHEREAS, on or about December 10, 2015, Cemusa NY, LLC changed its company name to JCDecaux Street Furniture New York, LLC; and

WHEREAS, on or about December 10, 2015, Cemusa, Inc. changed its company name to JCDecaux Street Furniture, Inc.; and

WHEREAS, on May 11, 2023, the New York City Council adopted Resolution No. 625, authorizing DOT to extend the 2015 Agreement for five (5) years, bringing the total term of the Agreement to twenty-five (25) years, subject to the approval of the FCRC; and

WHEREAS, the Franchisee and the City wish to amend the 2015 Agreement to extend the term of the 2015 Agreement and to incorporate additional rights and responsibilities, which are consistent with the rights and responsibilities in the 2015 Agreement, including an increase in the overall number of BSSs and APTs that the Franchisee may install, maintain and operate (the “2023 Increase in Bus Shelters and APTs”); and

WHEREAS, DOT considered the potential environmental impact resulting from the 2023 Increase in Bus Shelters and APTs and determined that it is a Type II action and not subject to further environmental review; and

WHEREAS, the FCRC held a public hearing, on June 12, 2023, regarding the proposed amendment to the 2015 Agreement, which was a full public proceeding in compliance with the requirements of the New York City Charter, and such hearing was closed on that date; and

NOW, THEREFORE, BE IT

RESOLVED, that the Franchise and Concession Review Committee does hereby approve the above described proposed amendment.

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

June 14, 2023

Date: _____

Signed: _____

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



Legislation Text

File #: Res 0625-2023, Version: *

THE CITY COUNCIL OF THE CITY OF NEW YORK RESOLUTION NO. 625

Resolution authorizing the Department of Transportation to extend and amend the Amended and Restated Agreement for the Coordinated Street Furniture Franchise.

By Council Member Salamanca (by request of the Mayor)

WHEREAS, by Executive Order No. 25, dated August 23, 1995, the Mayor has designated the Department of Transportation (“**DOT**”) as the responsible agency for the granting of franchises for bus stop shelters (“**BSSs**”), self-cleaning automatic public toilets (“**APTs**”), newsstand structures (“**NSs**”), additional public service structures (“**PSSs**”), and any combination thereof; and

WHEREAS, pursuant to Section 363 of Chapter 14 of the Charter of the City of New York (“**Charter**”) on August 19, 2003, the City Council of the City of New York (“**City Council**”) adopted Resolution No. 1004, Land Use No. 226-A (“**Resolution No. 1004**”), authorizing DOT, acting on behalf of the City of New York (the “**City**”), to grant a non-exclusive franchise for the occupation and use of the inalienable property of the City for the installation and maintenance of NSs and the installation, operation, and maintenance of BSSs, APTs, and PSSs (as defined in Resolution No. 1004, and which, together with NSs, BSSs and APTs are referred to herein as the “**Coordinated Franchise Structures**”); and

WHEREAS, pursuant to Resolution No. 1004, DOT issued a Request For Proposals on March, 26, 2004 (“**Franchise RFP**”) for a franchise to install, operate and maintain the Coordinated Franchise Structures; and

WHEREAS, in connection with the Uniform Land Use Review Procedure (“**ULURP**”) review of the Franchise RFP (ULURP no. C 960543 (A) GFY), a negative declaration was issued (CEQR no. 96DOT010Y) finding that such actions will not result in any significant adverse environmental impacts, all in accordance with the New York State Environmental Quality Review Act (“**SEQRA**”), the regulations set forth in Title 6 of the New York Code of Rules and Regulations, Section 617 et seq., the Rules of Procedure for City Environmental Quality Review (“**CEQR**”) (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of The City of New York); and

WHEREAS, on June 26, 2006, Cemusa, Inc. and the City, acting by and through its DOT, entered into the Franchise Agreement for the Coordinated Street Furniture Franchise for the installation, operation, and maintenance of BSSs, APTs, and PSSs and for the installation and maintenance of NSs (the “**2006 Agreement**”); and

WHEREAS, on September 20, 2007, Cemusa, Inc. assigned its interest in the 2006 Agreement to Cemusa NY,

LLC, a wholly owned subsidiary thereof; and

WHEREAS, at a meeting held on September 30, 2015, the New York City Franchise and Concession Review Committee (the “**FCRC**”), acting in accordance with its customary procedures, voted on and approved a change in control of Cemusa NY, LLC, pursuant to which all shares of Cemusa, Inc. were transferred from CEMUSA-Corporación Europea de Mobiliario Urbano, S.A. to JCDecaux North America, Inc. (the “**2015 Change in Control**”), together with certain other amendments, clarifications and provisions to the 2006 Agreement; and

WHEREAS, on October 1, 2015, Cemusa NY, LLC and the City, acting by and through its DOT, entered into an Amended and Restated Agreement for the Coordinated Street Furniture Franchise (the “**2015 Agreement**”); and

WHEREAS, on or about December 10, 2015, Cemusa NY, LLC changed its company name to JCDecaux Street Furniture New York, LLC (the “**Franchisee**”); and

WHEREAS, on or about December 10, 2015, Cemusa, Inc. changed its company name to JCDecaux Street Furniture, Inc.; and

WHEREAS, the Franchisee and the City wish to amend the 2015 Agreement to extend the term of the 2015 Agreement and to incorporate additional rights and responsibilities, including an increase in the overall number of BSSs and APTs that the Franchisee may install, maintain and operate (the “**2023 Increase in Bus Shelters and APTs**”); and

WHEREAS, DOT considered the potential environmental impact resulting from the 2023 Increase in Bus Shelters and APTs and determined that it is a Type II action and not subject to further environmental review; and

WHEREAS, the City Council has determined that the authorization of the extension of the 2015 Agreement by five years is consistent with Resolution No. 1004 and will be in the public interest by enhancing the health, welfare, convenience, and safety of the public;

NOW THEREFORE, BE IT RESOLVED,

FIRST, that the City Council hereby authorizes DOT to extend the 2015 Agreement for five (5) years, bringing the total term of the Agreement to twenty-five (25) years. Any extension granted pursuant to this resolution shall be subject to such other approvals as may be required by law, such as the approval of the FCRC and the separate and additional approval of the Mayor, and the registration of the Agreement by the Comptroller.

SECOND, DOT will file with the City Council within fifteen (15) days of approval by the Mayor, a copy of the Agreement.

Adopted.

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

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on _____, 2023, on file in this office.

City Clerk, Clerk of The Council

**THE CITY OF NEW YORK
DEPARTMENT OF TRANSPORTATION
DIVISION OF FRANCHISES, CONCESSIONS, AND CONSENTS**

**REQUEST FOR PROPOSALS FOR A FRANCHISE TO INSTALL, OPERATE AND
MAINTAIN BUS STOP SHELTERS, SELF-CLEANING AUTOMATIC PUBLIC
TOILETS AND PUBLIC SERVICE STRUCTURES AND TO INSTALL AND
MAINTAIN NEWSSTANDS IN THE BOROUGHS OF THE BRONX, BROOKLYN,
MANHATTAN, QUEENS AND STATEN ISLAND**

**DATE OF ISSUE: 3/26/04
PIN #84104MBAD689**

AUTHORIZED DEPARTMENT CONTACT

Proposers are advised that the Department's authorized contact person for all matters concerning this Request for Proposals ("RFP") is:

Paul Stanton
Agency Chief Contracting Officer
Department of Transportation
40 Worth Street, Room 1228
New York, NY 10013
Phone: (212) 442-7749 Fax: (212) 442-7449

The New York City Comptroller is charged with the audit of contracts in New York City. Anyone who believes that there has been unfairness, favoritism, or impropriety in the proposal process should inform the Comptroller of the City of New York, Office of Contract Administration, One Centre Street, Room 835, New York, NY 10007 (212) 669-3000.

Michael R. Bloomberg
Mayor

Iris Weinshall
Commissioner

**REQUEST FOR PROPOSALS FOR A COORDINATED
STREET FURNITURE FRANCHISE**

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Request for Proposals for a Coordinated Street Furniture Franchise

SECTION I -- SUMMARY

The City of New York, acting through its Department of Transportation ("Department"), invites all qualified firms to submit Proposals for a twenty (20) year Franchise Contract for the installation, operation and maintenance of Bus Stop Shelters ("Shelters"), self-cleaning Automatic Public Toilets ("APTs") and Public Service Structures ("PSSs") and the installation and maintenance of Newsstands (collectively "Franchise Structures") and the display of advertising thereon. The City seeks Proposals that demonstrate excellence in the design, installation, operation and maintenance of Franchise Structures that are clean, safe, and attractive, in convenient locations to serve the needs of residents and visitors.

This Request for Proposals is made pursuant to a City Council Authorizing Resolution (Appendix 1) authorizing the grant of non-exclusive franchises to install, operate and maintain Bus Stop Shelters, Newsstands, APTs and PSSs. Pursuant to this authority, the Department is seeking Proposals for a Franchise that will provide for excellence in design, installation, operation and maintenance, as well as the following:

- The installation and maintenance of a minimum of 3,300 Bus Stop Shelters, with amenities for the public in the form of street identification signage, seating, and public service information. This will require the creation of new designs, and preferably will include the replacement of the existing shelter inventory.
- The installation, operation, and maintenance of a maximum of 20 APTs. The Franchisee will be permitted to collect a minimal fee from the public for the use of the APTs.
- The installation and maintenance of a minimum of 330 Newsstands. The Franchisee will be required to cooperate with the operator of the Newsstand regarding maintenance and repair of the Newsstand structure.
- The installation, operation, and maintenance of PSSs, specifically limited to trash receptacles, multi-rack newsracks and information/computer kiosks that provide access to government or commercial activity. The public service provided shall be immediately apparent to the passerby and shall not be obscured physically or visually by the name or logo of any sponsoring entity. The specific number of PSSs of each type will be determined by the City after the award of the franchise.

The Franchisee will also be responsible for maintaining one existing City-owned pedestrian information kiosk.

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

- In order to minimize impacts on pedestrian circulation and the visual character of the streetscape, the footprint and height of the Franchise Structures shall be kept as small as possible consistent with their function and other requirements.
- In order to reduce physical and visual clutter on sidewalks, Proposers are encouraged to incorporate elements such as telephones, information/computer kiosks, trash receptacles and multi-rack newsracks within or on the Franchise Structures.
- In order to maximize pedestrian circulation and clear paths, Franchise Structures shall be aligned with adjacent existing elements on the sidewalks to the extent possible.

Request for Proposals for a Coordinated Street Furniture Franchise

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

Compensation to be paid to the City will be the greater of (a) a percentage of gross revenues derived by the Franchisee as a result of the installation of the Shelters, APTs and Newsstands and the display of advertising thereon or (b) a guaranteed minimum annual amount.

Compensation will be increased or reduced by a fixed amount for each PSS installed at the direction of the Department. Proposals shall include a proposed percentage of gross revenues, a proposed guaranteed minimum annual amount, and a proposed amount by which compensation will be increased or reduced for a single unit of each type of PSS. The suggested minimum for the proposed guaranteed minimum annual amount of compensation for each year is fifteen million dollars (\$15,000,000).

The Franchise will be required to submit monthly reports of gross revenues, in a format approved by the Department, broken down into categories of income. At the end of each operating year, the Franchisee will be required to submit a detailed income and expense statement for the past year's operation.

By submitting a Proposal, Proposers understand and accept that at a minimum the terms and conditions in Resolution No. 1004 adopted by the New York City Council on August 19, 2003, will become part of any Franchise granted.

On Tuesday, April 27, 2004 at 10:00 a.m., the Department will conduct a Preproposal Conference to provide an opportunity for interested parties to ask questions regarding the RFP. The Conference will be held at 40 Worth Street, Room 814, New York, NY.

Proposals are due on **Wednesday, June 30, 2004, at 2:00 p.m.**, and must be submitted in accordance with the Proposal Package Submission Requirements contained herein.

SECTION II -- SCOPE OF SERVICES

A. GENERAL INFORMATION

1. Design

The Coordinated Street Furniture Franchise is an important new initiative for the City of New York. Its primary goals are to augment and significantly improve the appearance and quality of the largest items of furniture in our streets.

Designs must achieve aesthetic excellence. They must be compatible with a wide variety of built contexts and must conform to a citywide coordinated design scheme. Designs for the different types of Franchise Structures must be coordinated so that within any one area there is a harmonious relationship between the various items of street furniture.

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

For each type of standard Franchise Structure (Bus Stop Shelter, Newsstand, Automatic Public Toilet and Public Service Structure meeting non-pillar dimensional criteria), Proposers must submit two basic designs. The first design shall be suitable for deployment, in the case of Bus Stop Shelters, throughout the City and, in the case of other Franchise Structures, in medium and high-density mixed-use environments. Proposers are required to show how each of these basic designs can be varied to suit specific contexts. This might be achieved, for example, through alternative shapes or forms for component parts, alternate materials, and/or varying the color of applied finishes. The second design for each type of standard Franchise Structure shall be appropriate for use within districts that are designated historic districts or in front of individual buildings that are designated New York City Landmarks. These designs may also be deployed on a limited basis in other locations. Some degree of variation in these basic designs is also required. Any designs for pillar structures shall be additional to the basic designs specified above.

Bus Stop Shelters and Newsstands must be available in several sizes and configurations to meet the constraints imposed by various street conditions and users' needs as specified below. The maximum dimensions of each of the Franchise Structures is described below and summarized in Appendix 2. A list of current locations is available upon request from the authorized Department contact.

All components of the Franchise Structures must be fabricated of high quality, durable, maintainable and vandal-resistant materials. To the maximum extent feasible, all surfaces of the Franchise Structures that are accessible to the public must be graffiti-resistant. Adequate illumination of the Franchise Structures and adjacent sidewalks must be provided. Proposers are encouraged to include the use of independent power sources, such as solar energy, as an alternative to connecting by underground conduit to the local utility.

Request for Proposals for a Coordinated Street Furniture Franchise

Plans may also allow for the possibility of inclusion of public pay telephones in or on all the Franchise Structures except PSSs. (Additional franchise authority from the Department of Information Technology and Telecommunications will be required to provide public pay telephone service at such telephones.)

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

2. Build-out

The Franchise Structures shall be installed in such locations as directed by the Department in accordance with the consultative process and the siting criteria specified below in Section G and in Appendix 3, respectively.

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

The design and placement of the Franchise Structures shall not result in an installation that causes the destruction or damage of any part of a Sidewalk or Historic Pavement. This shall not preclude the Franchisee from installing a Franchise Structure, including appurtenant utility connections, on a Sidewalk or Historic Pavement by any means necessary. Prior to any such installation, the Franchisee shall be required to:

- a) post a performance bond adequate to protect the adjacent property owner against any loss related to the condition of the Sidewalk or Historic Pavement that may be occasioned by the installation, operation, maintenance or removal of a Franchise Structure; and
- b) make a good faith effort to procure sufficient quantities of those materials of which the Sidewalk or Historic Pavement is comprised to repair, replace, or restore it to its original condition.

In the event that the placement of any Franchise Structure results in damage to the Sidewalk or Historic Pavement, such sidewalk or pavement shall be restored to its original condition at the sole expense of the Franchisee, using in-kind materials.

Request for Proposals for a Coordinated Street Furniture Franchise

The Franchisee will be required, at a minimum, to adhere to the following build-out schedule:

	Shelters	APTs	Newsstands	PSSs
Year 1	550	10	110	***
Year 2	550	10	110	***
Year 3	550	--	110	***
Year 4	550	--	***	***
Year 5	550	--	***	***
Year 6	550	--	***	***
Years 7-20	***	--	***	***

*** Additional structures as directed by the Department.

Proposals at a minimum must reflect the above build-out schedule. Proposers are encouraged to provide a more ambitious schedule for any or all aspects of the build-out.

During the term of the Franchise, the Department may direct the Franchisee to remove, replace, and/or relocate Franchise Structures as necessary to accommodate changing conditions or to address security concerns. The Franchisee, at the request of the City, shall be required to remove Franchise Structures which interfere with the construction, maintenance or repairs of public utilities, public works or public improvements, or which the City otherwise deems to be inappropriate at a particular location. At the request of the City, Franchise Structures so removed shall be reinstalled when construction, maintenance, or repairs are completed or relocated to sites approved by the City. Notwithstanding the foregoing, sites for relocation of APTs shall be subject to the approval of the Mayor and the Speaker of the Council. All such removals, reinstallations, and/or relocations shall be accomplished at the sole expense of the Franchisee.

Failure to adhere to the build-out schedule as directed by the Department will be grounds for cancellation of all or any portion of the Franchise Contract.

3. Maintenance and Operation

Maintenance of the Franchise Structures by the Franchisee shall include inspecting, cleaning and removing graffiti from the structures on at least two nonconsecutive days each week (or more frequently, as specified below), timely removal of debris, snow and ice in and around the structures, preventive maintenance and prompt repairs. Snow and ice removal shall include clearing a three-foot access path for wheelchairs and spreading salt, or preferably, a noncorrosive de-icer. The sidewalk immediately under or adjacent to the Franchise Structures shall be maintained in its proper condition or, if necessary, restored thereto at the Franchisee’s sole expense. Repairs that are necessary to ensure public safety, as determined by the Department, shall be performed within 24 hours of notification by the Department. The Franchisee shall be responsible for collecting refuse or recyclables from any trash receptacles incorporated within or on Franchise Structures each time the structures are cleaned, or more often as needed. However, the Franchisee shall not be responsible for the collection of refuse or recyclables from freestanding trash receptacles installed as PSSs.

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The Franchise Contract will provide for liquidated damages related to the Franchisee's failure to perform such maintenance to the satisfaction of the Department. A schedule of liquidated damages will appear in the Franchise Contract; liquidated damages will vary, based on the severity of the breach. Repeated failure to perform such maintenance to the satisfaction of the Department may be deemed a default in performance by the Franchisee and grounds for cancellation of all or any portion of the Franchise Contract. The City will have the right to inspect the Franchise Structures and to order compliance with installation, maintenance, operational and repair requirements.

The Franchisee shall also be responsible for acquiring and installing, at its sole expense, hardware and software for a computerized inventory system of the Franchise Structures and sites. This system shall have database, mapping, and graphic capabilities for recording the location, type, design, and features of all installed Franchise Structures and the location, features, and status of proposed sites for Franchise Structures, including sites that have been rejected. The system shall also have the capacity for contemporaneous two-way information sharing between the Department and the Franchisee regarding the installation, operation, and maintenance of the Franchise Structures. The Franchisee shall be responsible for maintaining said system and incorporating state-of-the-art technologies throughout the term of the Franchise. Proposers are encouraged to develop PC-based systems that use or are compatible with standard, commercially available programs. Such system shall be installed and operational at the commencement of the Franchise. On the expiration or sooner termination of the Franchise Contract, the computer system and data shall become the property of the City without compensation to the Franchisee.

4. Ownership of the Structures

The Franchise Structures will remain the property of the Franchisee during the term of the Franchise Contract. On expiration of the Franchise Contract, the Franchise Structures shall become the property of the City without compensation to the Franchisee. Alternatively, the City may elect to have the Franchisee remove any or all of the Franchise Structures and restore their sites to their proper condition, which removal and restoration shall be at the Franchisee's sole expense.

In the event the Franchise Contract is canceled by the Department in whole or in part prior to the expiration date for any reason other than by reason of default of the Franchisee, the City shall have the option to purchase from the Franchisee the then-existing Franchise Structures. The purchase price shall be determined by calculating 100% of the cost of fabricating and installing the structures, less depreciation on a straight line basis using an annual depreciation rate of 10%. The cost of fabricating and installing the structures and the process for determining the installation dates of the Franchise Structures shall be determined during negotiation of the Franchise Contract and shall be included in such contract. Alternatively, the Department may direct the Franchisee to remove any or all of the Franchise Structures and restore their sites to their proper condition, which removal and restoration shall be at the Franchisee's sole expense.

In the event of termination in whole or in part due to the default of the Franchisee, the Franchise Structures shall become the property of the City without any compensation to the Franchisee. Alternatively, the City may direct the Franchisee to remove any or all of the Franchise Structures and restore their sites to their proper condition, which removal and restoration shall be at the Franchisee's sole expense.

5. Security Fund

Prior to the execution of the Franchise Contract, the Franchisee will be required to deposit with the New York City Comptroller an amount to be determined by the City, which will be not less than five million dollars (\$5,000,000), sufficient to ensure the faithful performance by the Franchisee of all conditions, provisions, and requirements of the Franchise Contract. The Department will be authorized to make withdrawals from the Security Fund should the Franchisee fail to pay the required compensation or taxes. The Department also will be authorized, in the event the Franchisee fails to cure a breach of the Franchise Contract after notice from the Department, to cause the necessary work to be done and collect the cost thereof from the Security Fund. The Department also will be authorized to assess and collect liquidated damages from the Security Fund.

6. Performance Bond

Prior to the execution of the Franchise Contract, the Franchisee will be required to deposit with the New York City Comptroller a surety performance bond in an amount to be determined by the City sufficient to ensure the installation of the Franchise Structures and the faithful performance of all of the terms and conditions of the Franchise Contract, including, but not limited to, the build out obligations set forth in Section II.A.2. This performance bond shall also expressly provide for the in-kind replacement and repair of Sidewalks and Historic Pavement.

A portion of this performance bond may be in the form of cash, and the remainder shall be in the form of a bond, legally executed by a surety company or companies approved by the City of New York and authorized to do business in the State of New York. A portion of the performance bond will be reduced or returned, as the case may be, to the Franchisee upon the successful installation of the Franchise Structures, in accordance with a schedule to be determined in the Franchise Contract. The remaining portion will remain on deposit throughout the term of the Franchise.

7. Liability and Insurance

The Franchisee will be liable for, and shall indemnify, defend and hold the City, its officers, agents, and employees harmless from, any and all claims or damages to persons or property by reason of the installation, operation or maintenance of the Franchise Structures. The Franchisee will be required to procure and maintain, at its sole cost and expense, the following types of insurance from an insurance company acceptable to the City:

- a) Commercial General Liability Insurance in the amount of ten million dollars (\$10,000,000) aggregate and two million dollars (\$2,000,000 per occurrence) in the Company's name, and naming the City, its officers, agents and employees as an additional insured thereunder, and endorsed to cover the liability assumed by the Company.
- b) Workers' Compensation Insurance in accordance with applicable New York State law.
- c) Employers' Liability Insurance in accordance with applicable New York State law.

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- d) Automobile Liability Insurance in the amount of two million dollars (\$2,000,000) aggregate and one million dollars (\$1,000,000 per occurrence) and naming the City, its officers, agents, and employees as an additional insured.

B. BUS STOP SHELTERS

1. Design

The City seeks excellence in the design, installation and maintenance of Bus Stop Shelters.

Bus Stop Shelters must first and foremost provide meaningful protection from precipitation, wind, and sun, and the number and placement of side enclosures shall be sufficient to accomplish this purpose. At the same time, ease of access for both functional and security reasons must be maintained.

The Department strongly encourages innovation and flexibility in Bus Stop Shelter design. The Franchisee will be required to construct shelters in a variety of shapes and sizes to accommodate different street conditions and service needs, including extra-large Shelters for heavily used bus stops and Shelters with shorter and narrower footprints for sidewalks where space is limited in length or in width.

All designs must provide at least the following amenities:

- Adequate illumination of the interior and the adjacent sidewalk.
- Passenger seating which by design precludes reclining and may or may not be installed in every Shelter, but which the City may require to be installed or removed at any time.
- An area or areas on the structure for bus route maps, street maps, bus stop name and street identification, Guide-A-Ride canisters and other information. (Specifications for current bus stop signs and Guide-A-Ride canisters are available upon request from the authorized Department contact.) Bus stop name and street identification shall be back-lit or otherwise illuminated and shall be designed in such a manner to maximize the ability of bus passengers to see such name and identification from the bus as the bus approaches the bus stop.

Proposers are encouraged to propose additional public amenities.

Materials used for the walls of the Shelters must be transparent. The dimensions of structural frames and supports shall be kept at a minimum. In the event that glass is the material proposed for the Shelter walls, an alternative unbreakable and, to the maximum extent feasible, scratch-resistant material must also be proposed for Shelters at locations where there is a high incidence of vandalism.

Advertising panels, maps, and signs shall be located so as to minimize their impact on the visibility of adjacent buildings and the interior of the Bus Stop Shelter. They shall not interfere with pedestrian or motorist sight lines necessary for traffic safety.

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The maximum area of the largest Bus Stop Shelter shall be 150 square feet. The maximum length shall be 30 feet; the maximum width, excluding the roof, shall be 5 feet; and the maximum height shall be 9 feet.

2. Build-out

The City seeks a Proposal for a minimum of 3300 Bus Stop Shelters by the end of the sixth year of the Franchise term with options to direct the installation of additional Bus Stop Shelters, to be exercised, if at all, at the sole discretion of the City, but in no event later than the eighteenth year of the twenty-year Franchise. The total number of Bus Stop Shelters will not exceed 3500.

At the commencement of the franchise term, the Franchisee shall take ownership of all existing shelters from the Department. By no later than the end of the sixth year, the entire inventory must conform to the new designs and amenities, preferably through the construction of new Shelters, although proposals to accomplish this through retrofitting of existing shelters of the current design will also be considered. The Franchisee will be required to construct or retrofit at least 550 Shelters per year, as directed by the Department, during the first six years of the term. Said construction and/or retrofitting shall be done in accordance with an annual schedule to be furnished by the Department to the Franchisee. Said schedule shall be designed to afford a fair distribution of new and/or retrofitted Shelters throughout the five boroughs of the City and shall be based upon ridership and boarding data from the MTA New York City Transit and from authorized private carriers.

Shelters will be purchased, retrofitted, or constructed by the Franchisee at its sole expense. The Franchisee will be responsible for all installation costs, including providing the Shelters with electric power.

The Shelters will be located at bus stops where demand for their use is greatest, as determined by the Department following the consultation process described below.

During the term of the Franchise, the Department may direct the Franchisee to remove, replace, and/or relocate Shelters as necessary to accommodate changing conditions or to address security concerns. Such removals, replacements, and relocations shall be accomplished at the sole expense of the Franchisee.

3. Maintenance and Operation

Immediately on the commencement of the Franchise and throughout the Franchise term, the Franchisee will be responsible for the complete maintenance of the entire inventory of Bus Stop Shelters. The maintenance shall include, but shall not be limited to, cleaning, inspecting, and removing graffiti and refuse from the Shelters on at least two nonconsecutive days each week, promptly clearing and removing debris, snow, and ice from the ground in and around the Shelters, repairing or replacing damaged parts within 24 hours of notification by the Department, and preventive maintenance. Snow and ice removal shall include clearing a three-foot access path for wheelchairs and spreading salt or ice remover.

4. Intelligent Transportation Systems

The successful Proposer will be required to cooperate with the Department, MTA New York City Transit, or other agencies to make the structures available for the installation of wiring and equipment and the ongoing maintenance of Automatic Vehicle Location and Control (AVLC) systems as such systems are developed.

The Franchisee will not be responsible for the acquisition, installation, or maintenance of AVLC equipment or for associated costs. However, the Franchisee, as owner and maintainer of the Bus Stop Shelters, will be required to cooperate in its design, installation, and maintenance. This cooperation will include providing access to the Bus stop Shelters to permit AVLC installation and maintenance, and ensuring that routine maintenance of the shelters does not interfere with the equipment.

The expected dimensions of the video monitors and message signs for the operational test that will involve thirty Bus Stop Shelters are a length of 20.5 inches, a height of 9 inches and a depth of 7.25 inches.

C. AUTOMATIC PUBLIC TOILETS

1. Design

The City seeks excellence in the design, installation and maintenance of APTs.

Each unit must be accessible to persons with disabilities and must contain a commode; a hand-washing station that provides warm soapy water followed by warm rinse water; toilet tissue and seat cover dispensers; and a paper-towel dispenser or air-drier. Heating, ventilation and lighting systems, including emergency lighting, must be provided. The unit must be designed with the ability to fully and automatically self-clean, deodorize and disinfect the floor, seat, and bowl after every use. All APT units must contain a self-activating warning system that communicates contemporaneously all significant maintenance and operations problems to an operations center. All APT units must provide external indicators informing potential users of whether the unit is available for use.

In addition, every APT unit must provide an emergency alarm system that allows for two-way communication for activation by the user and transmission to an operations center and the Police and/or Fire Department. A smoke and fire alarm system with an automatic door-opening device must be provided. An emergency access portal, in addition to the user door, must be provided to allow access to the interior by police or other emergency services.

All APTs must be equipped with a timing device that will cause the door to open automatically after a fixed period of time, with an audible and visual warning signal to alert the user one minute prior to the door's opening.

The maximum area of each APT shall be 78 square feet. Except for pillar-style (cylindrical) units, the maximum length shall be 12 and 1/2 feet, the maximum width shall be 8 feet, and the maximum height shall be 12 feet. The maximum diameter of pillar-style units shall be 8 feet and

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the maximum height shall be 14 feet. Proposers are strongly encouraged to propose designs that utilize the minimum footprint necessary.

2. Build-out

The City seeks a Proposal for a maximum of 20 APTs by no later than the end of the second year of the Franchise term.

All APT sites shall be selected by the Department following the consultative process described below, and shall be subject to the final approval of the Mayor and the Speaker of the City Council. During the term of the Franchise, the Department may direct the Franchisee to remove or relocate APTs as necessary to accommodate changing conditions or to address security concerns. Sites for relocation of APTs shall be subject to the approval of the Mayor and the Speaker of the Council.

3. Maintenance and Operation

The APTs must be open to the public at least between the hours of 8:00 A.M. and 8:00 P.M. daily unless longer hours are established for a particular site by the Department.

The Franchisee will be responsible for the complete maintenance of every APT installed. This shall include but not be limited to daily visits to each unit to ensure that all systems are functioning properly, that the units are clean, and that all dispensers are fully stocked. In addition, the Franchisee must respond immediately to its self-activating maintenance and operation warning system. Comfortable interior temperature, ventilation, and illumination shall be maintained at all times when the APT is in operation.

D. NEWSSTANDS

1. Design

The City seeks excellence in the design, installation and maintenance of Newsstands.

Newsstands must provide optimum conditions for selling and displaying newspapers, periodicals and convenience items, as well as adequate storage space.

A Newsstand structure may not occupy more than 72 square feet of sidewalk space when in operation, including all necessary doors, screens, shelves, racks and cases. Each unit must be accessible to persons with disabilities who may operate or patronize the structure. The maximum width shall be 6 and 1/2 feet and the maximum length shall be 14 feet. A Newsstand structure may include a roof overhang extending no more than 3 feet from the front of the stand beyond the maximum footprint, at a minimum height of 7 and 1/2 feet above the sidewalk. Such overhang may extend along the sides of the Newsstand roof a distance of 2 feet from the front of the roof. The maximum height of the Newsstand structures shall be 9 feet. All Newsstands must be designed and built in compliance with the Americans with Disabilities Act. The interior design of Newsstands must reflect the criteria in Appendix 12.

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The majority of the Newsstand structures will be constructed on sites that are currently occupied by existing Newsstands, and in some such instances, sidewalk conditions will prohibit exceeding the existing footprint. Therefore, Proposers must be prepared to construct Newsstands of a variety of shapes and sizes. In the event that a public pay telephone is incorporated in the design of a Newsstand, such telephone shall not be located so as to obstruct or interfere with the front sales area of the Newsstand.

2. Build-out

The City seeks a Proposal for a minimum of 330 Newsstands by the beginning of the fourth year of the Franchise term with an option to direct the installation of additional Newsstands to be exercised at the sole discretion of the Department.

This build-out will include the replacement of approximately 330 existing Newsstands, which are owned and maintained by individual operators. Most of the replacement Newsstands will be installed at or near existing Newsstand sites, except as otherwise provided in section 20-231 of the New York City Administrative Code. Upon notification by the Department, the Franchisee shall also be responsible for dismantling, removing, and, if necessary, disposing of any or all of the existing Newsstand structures.

New Newsstand sites will be determined by the issuance of a license by the Department of Consumer Affairs pursuant to section 20-231 of the New York City Administrative Code.

The Department shall, in its sole discretion, determine the schedule for the construction, replacement and relocation of individual Newsstands, in accordance with the build-out schedule set forth in Section II.A.2 of this RFP. The Franchise Contract shall contain specific time limits for the construction, replacement and relocation of individual Newsstands. The Franchisee shall make every effort to minimize the time a Newsstand is out of operation due to construction, replacement or relocation. Failure to complete the construction, replacement or relocation of any Newsstand within the time specified shall result in the assessment of liquidated damages pursuant to the Franchise Contract.

The Franchisee will be responsible for all installation and costs associated with such installation, except as otherwise provided in section 20-231 of the New York City Administrative Code, including any necessary electric and telephone hook-ups. The franchisee shall be responsible for arranging and paying for the installation of any infrastructure required by the appropriate utility to establish a separate account for the Newsstand operator's usage of electricity at the Newsstand structure.

3. Maintenance and Operation

The Franchisee will be responsible for the maintenance of the exterior of every Newsstand structure that it has constructed and installed throughout the Franchise term. The Franchisee shall be required to cooperate with the operator of the Newsstand regarding maintenance and repair of the Newsstand structure.

The Franchisee will not be responsible for operating the Newsstands or for cleaning their interiors. The Franchisee will not be responsible for the cost of any telephone or electricity use

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by the Newsstand operator, nor for any other utility cost that is not necessary to the Franchise. The Franchisee will not be permitted to derive revenue from the operation of the Newsstands.

E. PUBLIC SERVICE STRUCTURES

Proposals shall include plans for the installation, operation, and maintenance of trash receptacles, multi-rack newsracks and information/computer kiosks that provide access to government or commercial activity. All PSSs shall be installed, maintained, and removed in accordance with all applicable laws, rules, regulations, and guidelines adopted or established by the City. The public service provided shall be immediately apparent to the passerby and shall not be obscured physically or visually by the name or logo of any sponsoring entity.

With the rapid development of information technology, the Department anticipates that opportunities for more advanced types of PSSs will expand after the issuance of this RFP. Additionally, the City’s needs in relation to street furniture are likely to change over time. During the Franchise term, the Franchisee may propose to provide additional types of PSSs or may be asked to do so by the Department subject to amending the Franchise Contract. All such changes will also be subject to any applicable public review, including the Uniform Land Use Review Procedure and approval by the Franchise and Concession Review Committee.

The Franchisee will also be responsible for maintaining one existing City-owned pedestrian information kiosk, listed below, in the same manner as the Franchise Structures.

	Street	Cross Street(s)	Corner/Side
Times Square	W 43rd Street	Broadway	NW

All PSSs shall be kept as small as possible consistent with their function.

The maximum area of each Information/computer Kiosk shall be 16 square feet. The maximum length shall be 4 feet and the maximum width shall be 4 feet. An Information/computer Kiosk may include a roof overhang extending no more than 2 feet beyond the maximum footprint on one side of the structure, at a minimum height of 7.5 feet above the sidewalk. No Information/computer Kiosk may exceed 9 feet in height.

The maximum area of each trash receptacle shall be 6.25 square feet. The maximum length shall be 2.5 feet and the maximum width shall be 2.5 feet. No trash receptacle may exceed 4 feet in height. In addition, the maximum size and weight of each trash receptacle shall be subject to the approval of the Department of Sanitation. The Franchisee shall not be responsible for the collection of refuse from freestanding trash receptacle installed as Public Service Structures.

The criteria that regulate multi-rack newsracks are found in section 19-128.1 of the New York City Administrative Code and in section 2-08 of Chapter 2 of Title 34 of the Rules of the City of New York, which are attached as Appendix 13. No multi-rack newsrack shall be higher than sixty (60) inches, wider than ninety (90) inches or deeper than thirty-six (36) inches.

F. REVENUE OPPORTUNITIES

The primary source of revenue to the Franchisee will be the sale of advertising space on the Franchise Structures. Advertising shall be permitted on the exterior of the structures subject to the conditions specified below. The total maximum advertising area shall be 55 square feet on Bus Stop Shelters and 82.5 square feet on APTs and Newsstands. Advertising on PSSs shall be prohibited except to the extent that the name or logo of a sponsoring entity, not to exceed 2 square feet, shall be permitted on Trash receptacles and Information/Computer Kiosks. The maximum advertising height shall be 7 feet on Bus Stop Shelters and 9 feet on APTs and Newsstands. However, the maximum height of advertising on pillar style APTs shall be 12 feet. No advertising shall be permitted on the exterior of Information/computer Kiosks or Trash receptacles except for the name or logo as set forth above. No advertising, including the name or logo of a sponsoring entity, shall be permitted on the exterior of a multi-rack newsrack. No advertising shall be permitted on APTs in parks; however, advertising may be placed on APTs on sidewalks adjacent to parks. (For informational purposes, a summary chart is provided as Appendix 2.)

Each Bus Stop Shelter may have a maximum of two advertising panels, which shall be located only on Shelter end panels (*i.e.*, panels that are aligned perpendicular to the curb). On Bus Stop Shelters greater than 25 feet in length, the Department may increase the maximum advertising dimensions and number of panels by up to two additional panels of a maximum of 27.5 square feet each, provided these panels are located on Shelter end panels, or one additional panel of a maximum of 27.5 square feet. This increase shall apply to no more than 10% of the total number of Franchise Structures citywide, and to no more than 20% of the total number of Franchise Structures in any one community district.

The Franchisee shall comply with the terms of the Bus Stop Shelter contract in effect at the time with respect to the transition from the existing Bus Stop Shelter Franchise to the Franchise to be awarded pursuant to this RFP. The current Bus Stop Shelter franchise contract provides that in the event the current franchisee has entered into contracts for advertising that is to be displayed after the current franchisee has ceased to operate the shelters, the current franchisee shall retain 16% of the gross revenue from any such advertising that is displayed 90 days or less after it ceases to operate the shelters, but shall not retain any revenue from advertising that is displayed more than 90 days after it ceases to operate the shelters. The revenue to be retained by the current franchisee shall not in any way diminish the revenue to be paid by the Franchisee as compensation to the City. A copy of the Bus Stop Shelter franchise contract may be obtained by calling the Department Contact.

Electronic media (such as “zipper”) will be permitted only on a case-by-case basis and, except for backlighting of printed posters, will be subject to the applicable zoning regulations for property adjacent to the site. Audio advertising will not be permitted. However, an audio component used in connection with an Information/computer Kiosk may be permitted in the sole discretion of the Department.

The display or placement of tobacco advertising shall be prohibited. The advertising of alcoholic beverages shall not be permitted within 250 feet of any school, day care center, or house of worship. Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful or obscene as

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determined by the Department, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Franchisee upon notice from the Department.

Consistent with State Law, the Franchisee will also be permitted to charge a minimal fee for the use of the APTs. Proposers are invited to submit proposals for other sources of revenue such as access charges or on-line advertising at Information/computer Kiosks. Any such charge or other consideration will be subject to the approval of the Department.

Public Service Advertisement Space

The Franchisee shall be required to provide space for public service advertisements on the Franchise Structures at no cost to the City. The space provided shall represent a minimum of 2.5% of the total number of advertising panels on the Franchise Structures, which shall be equitably distributed among the various types of Franchise Structures. The installation, maintenance and removal of all public service advertisements shall be performed by the Franchisee in accordance with the same standards and utilize the same materials and methods as are used by the Franchisee for commercial displays.

Marketing Partnership Agreements

Proposers are hereby advised that the City, through its official marketing agency, New York City Marketing Development Corporation (herein “NYC Marketing”), may enter into “Marketing Partnership” agreements. In addition to the 2.5% set aside above, the City reserves 20% of the advertising space on all Franchise Structures for use by the City and its marketing partners at no cost to the City or its marketing partners. Such space shall be distributed fairly throughout the City and shall represent a corresponding percentage of the value of the advertising space citywide. The installation, maintenance and removal of the advertising in this reserved space shall be performed by the Franchisee at no cost to the City or its marketing partners in accordance with the same standards and utilize the same materials and methods as are used by the Franchisee for other commercial displays. The Franchisee shall provide a monthly inventory of the advertising locations set aside for and used by the City for the purpose of certifying compliance with the Franchise Agreement.

The City will also have the yearly option to return some of the 20% in the first and subsequent years of the Franchise Agreement. In the event the City exercises its option in any given year, the compensation for the next calendar year will be increased on a cost per panel basis. Proposers should provide the amount that they will increase compensation to the City expressed as compensation per panel relinquished by the City. Such compensation may be expressed as a uniform value per panel for all locations, or as the value of a panel for specific geographic locations, including borough and any other geographic designation that is matched by a change in the amount of compensation. Each October after the date upon which the Franchise Agreement takes effect, the City will notify the Franchisee whether it intends to exercise this option for the following calendar year and how much space will be returned. The new percentage will take effect the following January and continue until the end of the calendar year.

Olympics

Proposers should consider that, if the 2012 Olympics or any other Olympics are awarded to New York City:

- (1) The City may require that the Franchisee cease to sell and place advertising on all or some of the Franchise Structures during the Olympic period.
- (2) The City, at its sole discretion, may impose restrictions on the parties who may advertise on the Franchise Structures and/or the nature of advertising that will be allowed during the Olympic period.
- (3) The City or its designated representative for advertising that may be displayed may assume control of advertising sales and placement during the Olympic Period.
- (4) The Franchisee will continue to be responsible to install, maintain and service the Franchise Structures, and the Franchisee will be required to comply with all other terms of the Franchise Agreement except those that are changed by the written directive of the City as reflected in this section of the RFP and the Franchise Agreement.

The Olympic period shall be defined as the period starting four weeks prior to the commencement of the Olympic Games and ending two weeks after the events are terminated.

Proposers should indicate the method by which they wish to be compensated for foregone revenue if the City were to exercise some or all of the provisions described above and in the event that the Franchisee loses advertising revenue as a result of any such actions taken by the City during the Olympic period. An example of such method of compensation would be a pro rata reduction of the minimum payment or percentage of gross revenue payment made to the City based on the reduction in gross advertising revenue realized by the Franchisee when gross revenue to the Franchisee for the Olympic period is compared to a similar historical time period.

G. SITE SELECTION AND CONSULTATION

Sites for Franchise Structures will be selected by the Department in accordance with the criteria specified in Appendix 3.

The Department will adhere to the following consultative process in designating new sites for Bus Stop Shelters, APTs and PSSs:

1. The Department will request recommendations for new sites for Bus Stop Shelters, APTs and PSSs from Council Members, Borough Presidents, Community Boards, Business Improvement Districts (BIDs), and the MTA New York City Transit (for Bus Stop Shelters only.)
2. The Department will review these recommendations and any other suggested sites for compliance with the siting criteria (Appendix 3) and additionally consider the following factors:

Bus Stop Shelters: Ridership figures, transfer points, location of existing shelters, geographic distribution throughout the five boroughs, sidewalk activity, presence of other Franchise Structures on the sidewalk

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APTs: Availability of water and sewer service, public convenience, enhancement of commercial and tourist areas, sites recommended by the Department of Parks and Recreation, geographic distribution, sidewalk activity, presence of other Franchise Structures on the sidewalk.

Public Service Structures: Sidewalk activity, geographic distribution, presence of other Franchise Structures on the sidewalk

3. The Department will distribute lists of proposed sites determined by the Department to be desirable for a 60-day comment period to Council Members, Borough Presidents, Community Boards, other appropriate City agencies, BIDs, the MTA New York City Transit (for Bus Stop Shelters only), adjacent property owners (for APTs only) and any other interested party, including Proposers, if they so request.

4. After consideration of the comments and selection of a Franchisee the Department will choose final sites and notify Council Members, Borough Presidents, Community Boards, other appropriate City agencies, the Franchisee, and any other person who commented on the proposed sites. The sites for installation of APTs shall be subject to the approval of the Mayor and the Speaker of the Council.

5. Newsstands: Newsstands remain a licensed operation so new locations shall be sited in accordance with the provisions of section 20-231 of the New York City Administrative Code and any rules promulgated pursuant thereto.

At least once each year, the Department will request from all Community Boards, BIDs, Council Members, Borough Presidents, and the Franchisee a prioritized list of locations for the placement or removal of Franchise Structures.

The Department may direct the Franchisee to replace Bus Stop Shelters, Newsstands, and PSSs at existing sites, independent of the above consultative process.

H. RESPONSE TO COMPLAINTS AND REQUESTS FOR REMOVAL

Any complaints the Department receives concerning the siting, installation or requested removal of the Franchise Structures shall be responded to by the Department. All Franchise Structures shall contain a conspicuously posted telephone number of a City government office to which the public may direct complaints and comments and instructions for filing a complaint. The Franchisee shall cooperate with the Department in timely responding to any such complaints.

SECTION III -- PROPOSAL PROCEDURES AND REQUIREMENTS

A. PROPOSAL PACKAGE

The Proposal Package shall contain the following:

1. Proposal Cover Sheet

The Proposer shall submit a completed Proposal cover sheet (attached as Appendix 4) transmitting the Proposal Package to the Department. The Cover Sheet shall be signed and dated by an individual authorized to enter into a Franchise Contract with the City on behalf of the Proposer. A separate cover sheet shall be completed and submitted for each firm that is a party to the Proposal, *e.g.*, two firms submitting one Proposal as a joint venture.

2. Statement of Qualifications

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

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

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

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

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

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

3. Technical Proposal

3.1 Narrative Each Proposal must include a detailed narrative description of how the Proposer plans to fulfill and, if applicable, exceed the terms and conditions of the Franchise as described in the Scope of Services section (Section II) of this RFP, as well as any commitments to improve design, technology, and/or services during the term of the Franchise Contract. The narrative must describe in detail the Proposer's plans pertaining to design, manufacture, installation, maintenance, and operation of each of the types of Franchise Structures, including proposed time limits for the construction, replacement and relocation of Newsstands. In addition, the narrative must describe the Proposer's plans for administering and marketing the Franchise Structures and the advertising thereon. The narrative must also describe the proposed computerized inventory and information-sharing system, including the operating system, type of computer, data to be entered, and reports to be made available to the Department. The narrative must include a staffing plan for all aspects of the Franchise. Reduced copies of the drawings described in Section 3.2 below may also be included in the narrative.

If the Proposer intends to manufacture and assemble the Franchise Structures in the United States or in the City of New York, the Proposer shall so state in the narrative. Proposers that manufacture and assemble their Franchise Structures in the United States or in the City of New York shall be granted a preference. Any Proposer seeking either preference will state the value of the labor and materials involved in the manufacture and assembly of the Franchise Structures, both in absolute dollars and as a percentage of the overall cost of manufacture and assembly, which the Proposer certifies will be done in the relevant jurisdiction. If the value of labor and materials involved in the manufacture and assembly in the subject locale equals less than eighty percent (80%) of the overall costs, then the Proposer does not qualify for the USA preference. If the value of labor and materials involved in the manufacture and assembly in the subject locale equals less than fifty percent (50%) of the overall costs, then the Proposer does not qualify for the New York City preference. The failure of a Proposer to qualify for either of the above preferences will not preclude further review and evaluation of such Proposer or the award of a Franchise to such Proposer.

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

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

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Maximum drawing size shall be 30 inches by 42 inches. Proposers shall submit two complete sets of drawings mounted on foam-core boards. All dimensions shall be included on the drawings indicating in detail methods of construction and the specific types of materials and finishes to be used, including colors and textures as applicable. Notes shall also confirm that the designs meet applicable code requirements. All drawings shall bear the seal of a Professional Engineer or Registered Architect licensed by the State of New York. Proposers may be required to submit additional items including perspective drawings, model photographs, and samples of materials, as well as additional sets of drawings (including reproducibles).

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

4. Cash Flow Analysis Proposers must submit a detailed cash flow analysis itemizing the revenues and expenses anticipated over the term of the Franchise. A form for the cash flow analysis is provided as Appendix 5. Proposers must complete and submit the form provided in Appendix 5. Additional cash flow analyses may also be provided.

5. Compensation Proposal The compensation to be paid to the City each year for the rights granted under the Franchise Contract with respect to Bus Stop Shelters, APTs, and Newsstands shall be a guaranteed minimum annual amount, or a percentage of any gross revenues derived by the Franchisee as a result of the installation of the Bus Stop Shelters, APTs, and Newsstands and the display of advertising thereon, whichever is greater. In the event that the City directs the Franchisee to install PSSs, the compensation shall be increased or reduced by a fixed amount for each PSS installed. The amount of this increase or decrease will likely vary depending on the type of PSS.

The suggested minimum annual compensation for the proposed guaranteed minimum annual amount of compensation for each year is fifteen million dollars (\$15,000,000).

The guaranteed minimum annual amount offered by a proposer may be in the form of all cash or a proposer may offer compensation in the form of approximately eighty percent (80%) cash plus an alternative form of compensation with a value equal to approximately twenty percent (20%) of such guaranteed minimum annual amount.

The preferred alternative form of compensation the City would consider includes, but is not limited to, commercial media outlets such as out-of-home signage (e.g., billboards, stadium signage, transit terminals, street furniture), promotional time on television, promotional time on radio, and web-based advertising. If proposing alternative compensation to cash, the proposal must include the percentage of the compensation, the effective cash value of the alternative(s) offered and an analysis of the valuation in sufficient detail for the committee to determine the value.

The alternative form of compensation offered must have at least the same dollar value at the end of the contract as at the beginning of the contract or the Franchisee will be responsible to make up any shortfall.

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“Gross revenues” shall consist of the sum of any and all user fees and any and all revenues obligated to be paid to the Franchisee, its subsidiaries, affiliates, or third parties as a result of the installation of the Franchise Structures, irrespective of the Franchisee’s ability to collect the revenues. Gross revenues shall be calculated on the basis of the total amounts contracted for by advertisers, telephone service providers, and the like, and shall include any amount received in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter. Gross revenues shall not be subject to any deductions for commissions, brokerage, labor charges, or other expenses.

Proposers must propose all of the following: (a) a guaranteed minimum annual amount of compensation; (b) a percentage of gross revenues to be paid each contract year during the term of the Franchise should the percentage exceed the guaranteed minimum annual amount; and (c) an amount by which the annual compensation will be increased or reduced for each of the three types of PSSs (trash receptacle, multi-rack newsrack, or information/computer kiosk), per unit installed.

A percentage of net receipts will not be acceptable. A preference shall be granted to proposals that provide a greater compensation to the City in the initial period of the agreement provided that the total proposed compensation over the term of the franchise is determined to be in the best financial interest of the City.

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

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

The proposed compensation shall be based on an assumption that the City will require the installation of 20 APTs.

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

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

6.2 Affirmation The Proposer shall complete and submit the Affirmation attached as Appendix 6 as part of the Proposal Package.

6.3 MacBride Principles The MacBride Principles attached as Appendix 9 must be signed and submitted as part of the Proposal Package and will be included in any Franchise Contract entered into by the Department pursuant to this RFP.

6.4 Proposer's Affidavit The Proposer's Affidavit attached as Appendix 11 must be signed and submitted as part of the Proposal Package.

7. Acknowledgment of Addenda The Proposer shall complete and submit the Acknowledgment of Addenda form, attached as Appendix 7, as part of the Proposal Package. This form serves as the Proposer's acknowledgment of the receipt of Addenda that may have been distributed by the Department prior to the Proposal Due Date and Time.

B. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS

1. Delivery

Proposal Packages must be received by the Department's Contracts Division, 40 Worth Street, Room 824A, on or before **June 30, 2004 at 2:00 p.m.** Proposals received after the Proposal Due Date and Time are late and shall not be considered. Instructions for delivery of scale models will be distributed at the Preproposal Conference.

2. Copies and Format

Proposers shall hand deliver one signed original and twenty (20) copies of the Proposal Package, except that Proposers need provide only two complete sets of the drawings mounted on foam-core boards described in Section 3.2, only one of each of the scale models described in Section 3.3, and only one original and two copies of the "Required City Documents" described in Section 6.

A proposal may include information on CD-ROM or comparable media; however, such submissions may only be submitted as supplements to the material required by this RFP, which must be provided on paper and in the form of models. Any submission in alternative media must include instructions on how to run the program.

3. Length of Proposal

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

4. Labeling

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

From: Proposer Name/Address
To: New York City Department of Transportation
Contracts Division
40 Worth Street, Room 824A
New York, NY 10013
RFP Title: Request for Proposals for a Franchise to install, operate, and maintain Bus Stop Shelters, Self-Cleaning Automatic Public Toilets, and Public Service

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Structures and to install and maintain Newsstands in the boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island

PIN: **84104MBAD689**

Proposal Due Date and Time: **June 30, 2004 at 2:00 p.m.**

5. Delivery Services

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

6. Proposal Package Checklist

Appendix 8, Proposal Package Checklist, which itemizes each component/document that is to be submitted as part of the Proposal Package, has been attached for the Proposer's convenience.

C. PROPOSAL EVALUATION PROCEDURES

1. Evaluation Committee 1.1 Proposals shall be evaluated by an Evaluation Committee that shall be comprised of a minimum of three (3) persons qualified to evaluate the components of this solicitation. Members of the Committee will likely include representatives of the Departments of Transportation, Design and Construction, and City Planning. The Evaluation Committee also will have technical advisors who may include representatives of other public entities such as the Art Commission, the Mayor's Office for People with Disabilities, the Landmarks Preservation Commission, the Department of Parks and Recreation, the Department of Environmental Protection, the Department of Buildings, the Department of Information Technology and Telecommunications, the Department of Homeless Services, the Police Department, the Fire Department, the MTA New York City Transit, the Community Assistance Unit and the Office of Management and Budget.

1.2 In addition, the City will present some or all of the design proposals received pursuant to this RFP to a Design Advisory Committee that may include representatives of civic organizations with expertise in architecture and urban design, the real estate industry, the Newsstand industries, and the Business Improvement Districts. Any recommendations made by this Design Advisory Committee will be reviewed and may be considered by members of the Evaluation Committee.

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

2. Evaluation Procedures

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Proposals received in response to this RFP will be reviewed and evaluated in four phases, three phases on a point scale providing for a maximum point total of 145, with points assigned as follows:

Phase I	Pass/Fail
Phase II	25
Phase III	60
Phase IV	55
Preference Points	5

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

2.1 Phase 1: Responsiveness Determination

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

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

Each Proposal that is deemed responsive by the Auditor General will be forwarded to the Evaluation Committee for its review. The Committee will examine and evaluate each Proposer's business organization, financial fitness and experience with street furniture and the sale and maintenance of outdoor advertising in urban environments. Each Proposer will receive a numerical score after this Phase. The Committee will recommend the three Proposers receiving the highest scores, plus any Proposer whose score is within 5% of the lowest of these three scores, for further review and consideration by the Evaluation Committee. All Proposals with scores lower than those satisfying the criteria above will receive no further review.

2.3 Phase 3: Assessment of the Technical Proposals

The Committee will examine and evaluate the technical proposals of each of the Proposers selected in accordance with Phase 2 of the Evaluation Procedures. The factors to be considered by the Committee in Phase 3 include but are not limited to: the Proposer's plans to fulfill and, if applicable, exceed the terms and conditions of the Franchise as described in Section II of this RFP; any commitments to improve design, technology and/or services during the term of the Franchise Contract; the Proposer's plans pertaining to design, manufacture, installation, maintenance and operation of each of the types of Franchise Structures, including the Proposer's plan for the replacement of existing Newsstands; the Proposer's plans for administering the Franchise, including the Proposer's computerized inventory and information sharing system; and the Proposer's plans for marketing the Franchise Structures and the advertising thereon. Each Proposer will receive a numerical score after this Phase.

2.4 Phase 4: Assessment of the Compensation Package

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The Committee will review and evaluate the compensation to be paid to the City proposed by each Proposer. Each Proposer will receive a numerical score after this Phase.

2.5 Final Selection

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

3. Evaluation Criteria The Evaluation Committee will review and evaluate Proposals according to the following criteria, which are listed in relative weight order for each phase:

3.1 Phase 1: Responsiveness Determination

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

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

The following evaluation criteria will be applied:

- a) The Proposer's business integrity and financial soundness, including without limitation adequate access to sources of capital and operating funds and the demonstrated ability to maintain books and records adequately.
- b) The Proposer's experience and demonstrated ability in the design, installation, operation, and maintenance of Franchise Structures in an urban environment.
- c) The Proposer's experience in the sale and maintenance of outdoor advertisements in an urban environment.
- d) The skill and capabilities of the Proposer's management, technical staff, and field personnel.

3.3 Phase 3: Assessment of the Technical Proposals

The following evaluation criteria will be applied:

- a) The designs of the Franchise Structures, including functional efficiency, aesthetics, security, durability, adaptability for various built environments around the City and accommodation for people with disabilities.
- b) The Proposer's plans for installing, maintaining, and operating the Franchise Structures, including proposed time limits for construction, replacement and relocation of Newsstands.
- c) The Proposer's plan for marketing the Franchise Structures and the advertising thereon, including without limitation attention to borough and neighborhood needs and the consideration of both local and national advertisers.
- d) The Proposer's plans for administering the Franchise, including the allocation of resources (*i.e.*, staff, materials, equipment, administrative overhead, etc.) for providing each element of the Scope of Services described in Section II of the RFP.

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- e) The Proposer's operational plan to meet or exceed the build-out schedule specified in the RFP.
- f) The adequacy of the Proposer's computerized information sharing system.
- g) The Proposer's ability to maintain the property of the City in good condition throughout the term of the Franchise.
- h) The Proposer's commitments to improve design, technology, and/or services during the term of the Franchise Contract.

In addition, a preference shall be granted to any Proposal which commits to manufacture and assemble the Franchise Structures in the City of New York in accordance with Section III, A, 3.1 of this RFP; to any Proposal which commits to manufacture and assemble the Franchise Structures in the United States of America in accordance with Section III, A, 3.1 of this RFP. These preferences will be granted in the form of bonus points to be applied to each qualifying Proposer's numerical score from this Phase.

3.4 Phase 4: Assessment of the Compensation Package

The following evaluation criterion will be applied:

The adequacy of the proposed compensation to be paid to the City. A preference shall be granted to proposals that provide a greater compensation to the City in the initial period of the agreement provided that the total proposed compensation over the term of the franchise is determined to be in the best financial interest of the City.

4. Prototype Structures

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

SECTION IV -- GENERAL INFORMATION

A. STATUS OF INFORMATION

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

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

B. COMMUNICATION WITH THE DEPARTMENT

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

Proposers are hereby directed that from the date this RFP is issued until the award of the Franchise contract, they and their key people as defined in Appendix 11, consultants, agents or representatives, lobbyists or lawyers are not to contact any employee in any City agency, other than the Department contact, with regard to this RFP or any addenda thereto.

Each proposer shall sign a Proposer's Affidavit regarding contact with the Department that is attached as Appendix 11. The affidavit shall be submitted with the proposal package. Failure to complete the affidavit may result in the proposal being disqualified as not responsive.

C. PROPOSER INQUIRIES

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

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

D. ADDENDA TO THE RFP

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

2. It is the Proposer's responsibility to assure receipt of all addenda by verifying with the Department Contact prior to submitting a Proposal that all addenda have been received. Proposers shall acknowledge the number of addenda received as part of their Proposals on the Acknowledgment of Addenda form (Appendix 7).

E. PREPROPOSAL CONFERENCE

1. A Preproposal Conference will be held on April 27, 2004 at 10:00 a.m. at 40 Worth Street, Room 814, New York, New York. The conference will be conducted by Department personnel to assist Proposers in understanding the RFP and Franchise requirements. Nothing stated at the conference shall change this RFP unless the change is made in writing in addenda issued by the Department Contact. A written summary of the Conference, including the names and affiliations of all attendees, shall be maintained by the Department in its files. Attendance at the Preproposal Conference is strongly recommended, but is not mandatory.

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

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

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

F. LOCATION LISTINGS

1. Proposers may request from the Department Contact a list of the locations of all existing Bus Stop Shelters and sidewalk Newsstands.

2. Proposers are advised to visit a substantial number of these locations, as well as a substantial number of bus stops that do not currently have Bus Stop Shelters, to become familiar with the wide variety of built contexts and topographical conditions in which the Franchise Structures will be located.

G. MODIFIED PROPOSALS

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

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

H. WITHDRAWAL OF PROPOSALS

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

I. LATE PROPOSALS AND MODIFICATIONS

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

J. CONFIDENTIAL AND/OR PROPRIETARY INFORMATION

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

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

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

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

K. COSTS INCURRED BY PROPOSERS

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

L. SUPPLEMENTAL INFORMATION, PRESENTATIONS, AND DEMONSTRATIONS

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

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

M. NEGOTIATIONS, BEST AND FINAL OFFERS

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

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

N. PROPOSER ACCEPTANCE OF RFP AND FRANCHISE PROVISIONS

Submission of a Proposal signifies to the Department the Proposer's intention to compete for the award of the particular Franchise Contract. By submitting a Proposal, Proposers understand and accept that at a minimum the terms and conditions specified in this RFP, in Resolution No. 1004 adopted by the New York City Council on August 19, 2003, and in the Investigation Clause attached as Appendix 10 will become part of any Franchise granted.

O. FRANCHISE CONTRACT AWARD

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

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

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

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

P. DETERMINATION OF PROPOSER RESPONSIBILITY

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

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satisfactory record of business integrity; VENDEX information; and administrative (*e.g.*, record of past performance) and other appropriate information.

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

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

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

Q. RFP POSTPONEMENT/CANCELLATION

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

R. COMPLAINTS

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

APPENDIX 1
Authorizing Resolution

THE CITY COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 1004
L.U. NO. 226-A

CITYWIDE

20035026 GFY

Resolution authorizing the Department of Transportation to grant nonexclusive franchises for the installation, operation, and maintenance of coordinated franchise structures. By City Council Member(s) Katz and Avella (by request of the Mayor):

Material to be added is underlined; material to be deleted is in [brackets].

WHEREAS, by Executive Order No. 25, dated August 23, 1995, the Mayor has designated the Department of Transportation ("DOT") as the responsible agency for the granting of franchises for Bus Stop Shelters ("BSSs"), self-cleaning Automatic Public Toilets ("APTs"), Newsstand structures ("NSs"), and any combination thereof; and

WHEREAS, the Executive Order further provides that franchises authorized may include additional public service structures ("PSSs") that shall include and be limited to trash receptacles, multi-rack news racks and information/computer kiosks; and

WHEREAS, pursuant to Section 363 of Chapter 14 of the Charter of the City of New York ("Charter"), the Commissioner of Transportation ("Commissioner") has made the initial determination of the need for a nonexclusive combined franchise for BSSs, APTs, NSs, and PSSs in the City of New York ("City") and for allowing the placement of advertising thereon. Such BSSs, APTs, NSs, and PSSs shall hereinafter be known collectively as the "franchise structures;" and

WHEREAS, the City Council of the City of New York ("City Council") has determined that the granting of such franchises will be in the public interest by enhancing the health, welfare, convenience, and safety of the public;

NOW THEREFORE, BE IT RESOLVED,

FIRST, that the City Council hereby authorizes DOT to grant nonexclusive franchises that utilize the inalienable property of the City for installing, operating, and maintaining franchise structures in the five Boroughs of the City and that allow the placement of advertising thereon. All franchises granted pursuant to this resolution shall be subject to the approval of the Franchise and Concession Review Committee ("FCRC") and the separate and additional approval of the Mayor. For purposes of this resolution, "inalienable property of the City" shall mean the property designated in Section 383 of the Charter. 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 City Council ("Expiration Date"). No franchise shall be granted pursuant to this resolution by DOT, nor approved by the FCRC or the Mayor, after the Expiration Date.

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SECOND, that prior to the granting of any such franchise, one or more Request(s) for Proposals (“RFP”) or other solicitation shall be issued by DOT for the franchise structures. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with the New York State Environmental Quality Review Act (“SEQRA”), the regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.*, the City Environmental Quality Review (“CEQR”) Rules of Procedure of 1991, Executive Order No. 91 of 1977, as amended, and Sections 197-c and 197-d of the Charter.

THIRD, that DOT shall develop siting criteria for the franchise structures be included in any RFP or other solicitation that shall address, but not be limited to, the following matters:

1. adequate sidewalk clearance to assure reasonable pedestrian flow;
2. proximity to other street furniture, sidewalk obstructions, and franchise structures;
3. permitted uses on adjacent zoning lots;
4. visual impact on vehicular traffic;
5. impact on designated landmarks and historic districts;
6. proximity to required water, sewer, and electrical connections; and
7. relative location of curb cuts.

FOURTH, that DOT shall develop design criteria for the franchise structures to be included in any RFP or other solicitation that shall address, but not be limited to, the following matters:

1. a requirement that all new franchise structures reflect a citywide coordinated design scheme;
2. a requirement that the design scheme take into account compatibility with special contexts, such as historic districts, including the ability to incorporate site specific design components;
3. the maximum envelope of the franchise structures;
4. the maximum number and area of the advertising panels on each type of franchise structure;
5. the number and placement of side enclosures for the BSSs so as to provide meaningful protection from the elements;
6. possible variation of footprints of the franchise structures as related to service needs; [and]
7. seating for the BSSs[.] ; and

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8. interior design criteria for newsstands.
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FIFTH, that DOT shall develop a process to be included in any RFP or other solicitation for consultation with City Council members and Community Boards regarding the selecting of sites for the installation of franchise structures and for responding to complaints[.] and requests for removal, provided, however, that a site for installation of an APT shall be subject to the approval of the Mayor and the Speaker of the Council.

SIXTH, that in reviewing and evaluating responses to any such RFP or other solicitation, DOT shall apply the evaluation criteria listed below uniformly to all such responses and shall review and evaluate all such responses within the same time period. The evaluation criteria to be used in evaluating the responses to such an RFP or other solicitation shall include, but not be limited to, the following:

1. the design of the franchise structures, including security, aesthetic and functional aspects, accommodation of persons with disabilities, and design flexibility so as to enable the franchise structures to relate to various built environments around the city;
2. an assessment of the fitness of the respondent with regard to:
 - a. experience and demonstrated ability in the design, installation, operation, and maintenance of franchise structures in an urban environment;
 - b. experience in the sale and maintenance of outdoor advertisements in an urban environment;
 - c. skill and capabilities of management, technical staff, and field personnel; and
 - d. business integrity and financial soundness, including, without limitation, adequate access to sources of capital and operating funds, and the demonstrated ability to maintain books and records adequately;
3. the adequacy of the proposed compensation to be paid to the City; provided, however, that a preference shall be granted to proposals that provide a greater compensation to the City in the initial period of the agreement provided that the total proposed compensation over the term of the franchise is determined to be in the best financial interest of the City;
4. the ability of the applicant to maintain the property of the City in good condition throughout the term of the franchise;
5. whether the place of manufacture and assembly for such franchise structures is in the City of New York, in which case a preference shall be granted to said applicant; and

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6. whether the place of manufacture and assembly for such franchise structures is in the United States of America, but not in the City of New York, in which case a preference shall be granted to said applicant.

The failure of an applicant to qualify for [either] any of the preferences set forth in evaluation criteria designated three (3), five (5) and six (6) above shall not preclude further review and evaluation of such applicant or the award of a franchise to such applicant.

SEVENTH, that DOT shall apply the MacBride principles when granting franchises pursuant to this resolution.

EIGHTH, that any franchise granted pursuant to this authorizing resolution shall include the entire City.

NINTH, that in the event that any of the franchise structures include newspaper or periodical dispensers, boxes, or racks, such dispensers, boxes, or racks shall be installed, maintained, and removed in accordance with all laws, rules, and regulations adopted by the City of New York.

TENTH, that in the event that any of the franchise structures include public pay telephones, such public pay telephones shall be installed, maintained, and removed in accordance with all laws, rules, and regulations adopted by the City of New York. Public pay telephone service in the franchise structures shall be provided only by a person or entity franchised by the City of New York to provide such service.

ELEVENTH, that any franchise granted pursuant to this authorizing resolution shall be by written agreement that shall, without limitation, provide that:

1. the term of such franchise, including any option(s) to renew, shall not exceed twenty (20) years;
2. no direct public subsidy shall be made available to any franchisee;
3. the compensation to be paid to the City shall be a percentage of any gross revenues derived by the franchisee as a result of the installation of the franchise structures and the display of advertising thereon, or a guaranteed minimum annual amount, whichever is greater. Such compensation shall not be considered in any manner in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatever kind or description that are now or at any time hereafter may be required to be paid pursuant to any local law of the City or any law of the State of New York;
4. a franchise may be terminated or canceled by the Commissioner in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;
5. there shall be a requirement for providing free space for public service advertisements on the franchise structures. Said space shall represent a minimum of 2.5% of the total number of advertising panels on the franchise structures. Such public service advertisements shall be equitably distributed among the various types of franchise

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structures. DOT shall be responsible for informing all agencies of City government of such free advertising space for public service announcements. In order to ensure wide and fair distribution of such free advertising space, DOT shall develop a plan for coordinating requests by said agencies for the use of such space[;]. At the request of the City, additional advertising space shall be set aside for other City purposes;

6. advertising for tobacco products shall be prohibited;
7. the design and placement of franchise structures shall be subject to the review and approval of the Landmarks Preservation Commission and the Art Commission, to the extent required by law;
8. the design and placement of the franchise structures shall not result in an installation that causes the destruction or damage of any part of a [distinctive] sidewalk or historic pavement. Nothing herein shall preclude the franchisee from installing franchise structures, including utility connections appurtenant thereto, on a [distinctive] sidewalk or historic pavement by any means necessary; provided, however, that prior to such installation, the franchisee shall:
 - a. post a performance bond adequate to protect the adjacent property owner against any loss related to the condition of the [distinctive] sidewalk or historic pavement that may be occasioned by the installation, operation, maintenance, or removal of a franchise structure;
 - b. make a good faith effort to procure sufficient quantities of those materials of which the [distinctive] sidewalk or historic pavement is comprised to repair, replace, or restore it to its original condition;

In the event that the placement of any franchise structure results in damage to a [distinctive] sidewalk or historic pavement, such sidewalk or pavement shall be restored to its original condition at the sole expense of the franchisee using in-kind materials.

9. the franchisee shall be required to maintain complete and accurate books of account and records in compliance with any and all specific requirements for record keeping, as shall be established by DOT. Such books and records shall be made available to the City for inspection on demand;
10. the franchisee shall be required to maintain an office in the City where the above books and records shall be maintained and where the franchisee's accounting, billing, and clerical functions pertaining to the franchise operation shall be performed;
11. 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;
12. there shall be provisions requiring the franchisee to comply with all applicable City laws, regulations, and policies related, but not limited, to employment, purchasing, and investigations;

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13. there shall be provisions to require the franchisee to comply with the applicable provisions of the Americans with Disabilities Act and any additional applicable federal, state, and local laws relating to accessibility for persons with disabilities;
14. there shall be provisions to restrict the assignment or other transfer of the franchise or portions thereof 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;
15. the franchisee shall submit to the City's Vendor Information Exchange System ("VENDEX");
16. the franchisee shall obtain all required permits and comply with all applicable rules of government agencies having jurisdiction over the franchise structures;
17. the franchisee shall at all times maintain on file with DOT a complete and accurate listing of sites, by borough and community district, at which franchise structures are located;
18. the franchisee shall establish and maintain prompt and efficient consumer complaint handling procedures including, but not limited to, the posting of a complaint phone number and instructions for filing a complaint on all franchise structures;
19. there shall be one or more security funds established to ensure the performance of the franchisee's obligations under the agreement;
20. there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;
21. there shall be other remedies, including liquidated damages, to protect the City's interests in the event of a franchisee's failure to comply with the terms and conditions of the agreement;
22. there shall be provisions to ensure quality workmanship and construction methods, and to encourage state-of-the-art building materials to be integrated into the franchise structures as they become available;
23. there shall be provisions for preventive maintenance, prompt repairs, and the removal of snow and ice, and provisions for the assessment of monetary damages if the franchisee fails to so maintain, repair, or remove;
24. there shall be provisions for inspecting and cleaning of the franchise structures and for the prompt removal of graffiti; such inspecting, cleaning, and graffiti removal shall be done not less than twice a week;
25. there shall be provisions preserving the right of the City to perform public works or improvements in and around those areas occupied by the franchise structures;

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26. the City shall have the right to inspect the franchise structures and to order compliance with installation, maintenance, operational, and repair requirements set forth in the agreement;
27. there shall be provisions to minimize the extent to which the [public] use of the streets of the City is disrupted in connection with the construction, installation, operation, maintenance, repair, removal, or deactivation of the franchise structures;
28. all franchisees shall comply with all applicable sections of the building, plumbing, and electrical codes of the City of New York, and where the work to be done in connection with the installation, operation, maintenance, repair, removal, or deactivation of the franchise structures requires that such work be performed by a plumber or electrician, the franchisee shall employ and utilize only licensed plumbers and/or electricians;
29. the franchisee, at the request of the City, shall be required to remove franchise structures that interfere with the construction, maintenance, or repairs of public utilities, public works, or public improvements, or that the City otherwise deems to be inappropriate at a particular location. At the request of the City, franchise structures so removed shall be reinstalled when construction, maintenance, or repairs are completed, or shall be relocated to sites approved by the City[;]. All such removals, reinstallations, and/or relocations shall be at the sole expense of the franchisee.
30. the franchisee shall have the following specific obligations regarding the BSSs:
 - a. the design of the BSSs must include some form of passenger seating, such as a bench that may or may not be installed in every BSS, but which the City may require to be installed;
 - b. the franchisee shall be required to provide an area or areas on the BSSs for bus route maps, street maps, bus stop name identification, Guide-a-Ride canisters and other information, and shall be required to produce and install such signage as the City requests;
 - [c. the franchisee, at the request of the City, shall be required to remove, replace, and relocate BSSs;]
31. the franchisee shall have the following specific obligations regarding the APTs:
 - a. the maximum charge to the public for use of the APTs shall be a material term of the agreement to be approved by the FCRC;
 - b. the APTs must be open to the public at least between 8:00 A.M. and 8:00 P.M. daily;
32. the franchisee shall have the following specific obligations regarding the NSs:

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a. the franchisee shall be required to cooperate with the operator of the newsstand regarding maintenance and repair of the newsstand structures[;] while the operation of the newsstand shall be solely the responsibility of the newsstand operator who shall be subject to all applicable laws, rules, and regulations governing newsstands;

b. the franchisee shall be responsible for all installation and costs associated with any necessary electric and telephone hook-ups to the newsstand structures;

c. the franchisee shall be responsible for arranging and paying for the installation of any infrastructure required by the appropriate utility to establish a separate account for the newsstand operator's usage of electricity at the newsstand structure;

33. the franchisee shall not be responsible for cleaning the interiors of newsstands, for the cost of any telephone or electricity use by a newsstand operator or for any other utility cost which is not necessary to the franchise;

[33.]34. the franchisee shall have the following specific obligation regarding the PSSs: the public service provided shall be immediately apparent to the passerby and shall not be obscured physically or visually by advertising.

TWELFTH, that DOT shall file with the City Council the following documents:

1. within fifteen (15) days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;
2. within fifteen (15) days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution and any subsequent modification thereof;
3. on or before July 1 of each year, for the preceding calendar year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution; and
4. on or before July 1 of each year, a report detailing the location of each franchise structure installed or removed during the preceding calendar year.

Adopted.

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

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on August 19, 2003, on file in this office.

City Clerk, Clerk of the Council

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APPENDIX 2**Summary Chart: Dimensions and Clearances
(For Informational Purposes Only)**

	Clear Path	Curb setback	Maximum Size				Maximum Advertising	
			Area	Length	Width	Height	Area	Height
Shelter	7 ft	3 ft	150 sq ft	30 ft	5 ft	9 ft	55 sq ft	7 ft
APT	8 ft	1.5 ft	78 sq ft	12.5 ft	8 ft	12 ft	82.5 sq ft	9 ft
Pillar	8 ft	1.5 ft		8 ft	8 ft	14 ft	82.5 sq ft	12 ft
Newsstand	9.5 ft	1.5 ft	72 sq ft	14 ft	6.5 ft	9 ft	82.5 sq ft	9 ft
Information/computer kiosks	9.5 ft	1.5 ft	16 sq ft	4 ft	4 ft	9 ft	None*	None*
Trash receptacle	9.5 ft	1.5 ft	6.25 sq ft	2.5 ft	2.5 ft	4 ft	None*	None*
Multi-rack Newsrack	8 ft	1.5 ft to 2 ft	22.5 sq ft	3 ft	7.5 ft	5 ft	None**	None**

* The name or logo of a sponsoring entity, covering an area not to exceed 2 square feet, shall be permitted.

** The name or logo of a sponsoring entity shall not be permitted.

APPENDIX 3

Siting Criteria

The general provisions contained in the first section of these criteria apply to all Franchise Structures, except Newsstands, trash receptacles, and multi-rack newsracks. Newsstands shall be sited in accordance with the criteria in section 20-231 of the Administrative Code and any rules promulgated by the Department of Consumer Affairs pursuant thereto. Trash receptacles shall be sited in accordance with relevant Department of Sanitation regulations and guidelines. Copies of the referenced documents may be requested from the Department contact. Multi-rack newsracks shall be sited in accordance with section 19-128.1 of the New York City Administrative Code and section 2-08 of Chapter 2 of Title 34 of the Rules of the City of New York, attached as Appendix 13. Additional requirements applying to particular types of structures are stated in the sections that follow. These additional requirements are designed to accommodate differences in the structures' function, appearance, and use and to ensure appropriate and consistent locational opportunities.

A. General Provisions

1. **Clear Path.** All Franchise Structures shall be installed so as to allow a straight unobstructed path ("clear path") for pedestrian circulation on the sidewalk. The dimensions of the clear path for each type of structure are specified in the subsequent sections. No grates or cellar doors shall be included as a part of the clear path directly in front of or behind a Franchise Structure.
2. **Sight Lines.** The placement of the Franchise Structures shall not interfere with pedestrian or motorist sight lines necessary for traffic safety.
3. **Minimum Distance Requirements.** Unless otherwise stated, distances shall be measured between the nearest points, viewed in plan, of the Franchise Structure and the specified object or element. Where a distance is required to be measured parallel to the curb line, the measurement shall be taken between the two lines perpendicular to the curb line, one touching the Franchise Structure and the other touching the specified object or element, that are closest to each other.
 - a) The following minimum distances shall be required between the Franchise Structure and the specified element or object:
 - i) Fifteen feet, measured parallel to the curb line, from Bus Stop Shelters; Automatic Public Toilets; Newsstands; information/computer kiosks; enclosed or unenclosed sidewalk cafes; subway entrances or exits.
 - ii) Ten feet from: Fire hydrants; standpipes; Siamese connections; driveways (which distances must also meet the Department's safety and operational requirements); building lines extended at the intersection of two streets, in accordance with Executive Order No. 22 of 1995 (see Figure 1).
 - iii) Five feet from: The trunk of any tree; canopies; information kiosks.
 - iv) Three feet from: Streetlights and traffic signal poles.

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- v) Two feet from: Ventilation or other grills; manholes; access plates; street signs; parking meters; fixed litter baskets; tree pits; valve boxes; telephones; cellar doors; mailboxes.
 - vi) One and one-half feet from the curb of any street, except for Bus Stop Shelters (see below).
- b) In addition to the above distance requirements, for any Franchise Structure where access for the public is provided from a side of the structure other than that adjacent to the clear path, the following minimum distances shall be required between each such side of the Franchise Structure and the specified element or object:
- i) Five feet from any above-ground structure (*e.g.*, street lights, traffic signal poles, street signs, parking meters, fixed litter baskets, telephones, mail boxes)
 - ii) Three feet from any element or object that is flush with the sidewalk (*e.g.*, ventilation or other grills, manholes, access plates, tree pits, valve boxes)
- c) No Franchise Structure may be installed directly in front of a building entrance or exit without written permission from the abutting property owner. No Franchise Structure shall be installed within 5 feet (measured parallel to the curb line) of a building entrance except where the Department determines that this requirement cannot be reasonably met.
- d) No Franchise Structure may be installed within 3 feet of the property line of a residential or commercial structure without written permission from the abutting property owner.
- e) No Franchise Structure may be located under a fire escape.
- f) Except for Bus Stop Shelters, no Franchise Structure may be located within a bus stop zone or a taxi stand.
4. Vaults. Where a vault is present, the Franchisee shall submit certification from an engineer that the installation of the Franchise Structure will in no way damage the vault.
5. Electrical Sources. Franchise Structures should be as close as possible, subject to all other distance requirements, to the source of electricity, if required for the operation of the Franchise Structure. Such Franchise structures may not be sited farther than 150 feet from the nearest available electric power source, unless otherwise directed by the City. The Franchisee is prohibited from using a traffic signal or Con Edison type #12 post, or any power source across a major or protected roadway, unless authorized to do so by the Department.
6. Landmarks and Historic Districts. The placement of the Franchise Structures will be subject to the review and approval of the Landmarks Preservation Commission to the extent required by law.

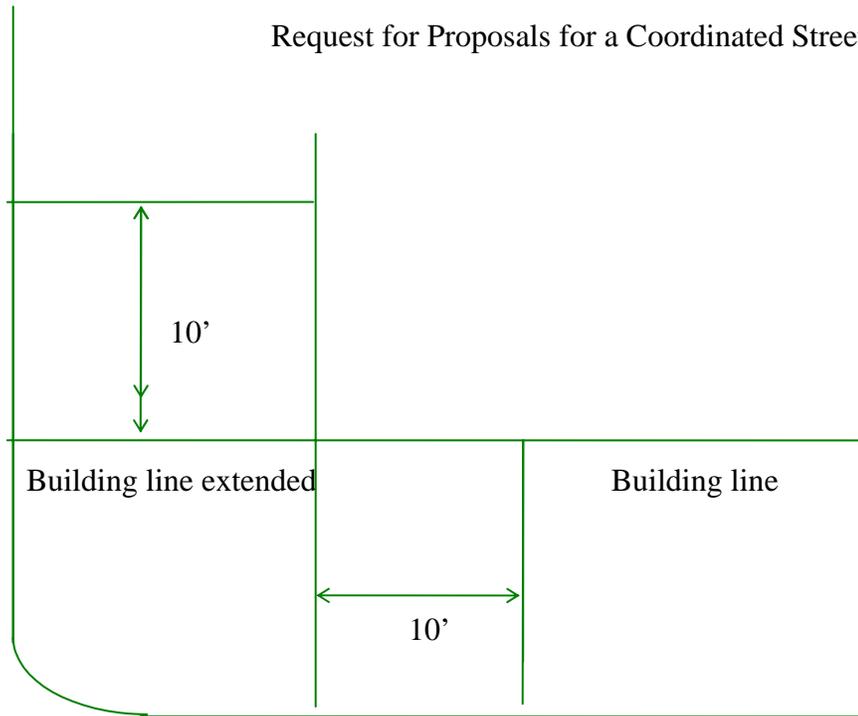


Figure 1. Clear Corner Policy (Executive Order No. 22 of 1995)

B. Bus Stop Shelters

1. Clear Path. In general, Bus Stop Shelters shall be installed to allow a minimum clear path of 7 feet in width. However, a reduced clear path may be permitted by the Department if necessary to allow the installation of a Bus Stop Shelter. In no case shall such clear path be less than 5 feet in width. The clear path for a Bus Stop Shelter may include the area covered by the Bus Stop Shelter's roof overhang, provided such overhang is a minimum of 7 and 1/2 feet high.
2. Clearance from Curb. All Bus Stop Shelters shall be installed to allow a straight unobstructed path a minimum of 3 feet in width between the Shelter and the curb. Viewed in plan, the roof of a Bus Stop Shelter including any overhang shall be set back from the curb line a minimum distance of 2 feet.
3. Relation to the Bus Stop
 - a) All Bus Stop Shelters shall be located as close as possible to the head of the bus stop, but no less than 10 feet from the head of the bus stop at locations where parking is permitted immediately adjacent to the head of the bus stop.
 - b) If a Bus Stop Shelter has only one enclosed end, it should be situated toward the head of the bus stop.

C. Automatic Public Toilets, Public Service Structures

1. Clear Path
 - a) All APTs shall be installed to allow a minimum clear path of 8 feet in width.

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- b) All information/computer kiosks shall be installed to allow a minimum clear path of 9 and 1/2 feet in width.
 - c) The clear path for an information/computer kiosk may include an area up to 3 feet in width covered by the structure's roof overhang, provided such overhang is at a minimum height of 7.5 feet above the sidewalk.
 - d) The clear path shall extend 15 feet to each side of the Franchise Structure.
 - e) Franchise Structures on sidewalks shall be located either within 2 and 1/2 feet of the curb line or within 1 foot of the building line.
2. Minimum Distance Requirements. A minimum 15-foot distance, measured parallel to the curb, is required upon installation between the Franchise Structure and:
- a) Entrances to houses of worship.
 - b) Any entrance to the elevator lobby of a building having non-residential uses above the street-level floor and having 16 floors in height or more with a frontage of at least 100 feet on narrow streets or 140 feet on wide streets (as defined in Section 12-10 of the New York City Zoning Resolution).
 - c) Any entrance to the lobby of a hotel.
 - d) Any entrance to a bank from the street that serves the public, including ATM entrances.
 - e) Entrances to theaters and box offices.

D. Additional Requirements for Automatic Public Toilets

1. Permissible Locations. APTs shall be located only:
- a) On wide streets, as defined in Section 12-10 of the New York City Zoning Resolution, only in commercial, manufacturing or mixed use districts.
 - b) On sidewalks or plazas adjacent to property owned or leased by a government agency or public authority or under the jurisdiction of the Economic Development Corporation.
 - c) On traffic islands or public places bounded on all sides by mapped streets under the jurisdiction of the Department.
 - d) On or adjacent to parks property or playgrounds, subject to the approval of the Department of Parks and Recreation.
2. Utilities. The siting of APTs shall be subject to consideration of the economic feasibility of making necessary utility connections. All APT sites are subject to the additional approval of the Department of Environmental Protection.

E. Special Circumstances

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

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particular location that in the opinion of the Commissioner would result in an over-concentration of Franchise Structures.

Notwithstanding anything contained herein, the siting of Franchise Structures shall be subject to any applicable requirements of the New York City Administrative Code. Notwithstanding anything contained herein, trash receptacles may be replaced at their existing locations in accordance with the Department of Sanitation's Operation Order for the placement of litter baskets and the Mayor's Clear Corner Policy (Exec. Order No. 22 of 1995).

A newsstand required by the provisions of paragraph five of subdivision k of section 20-231 of the New York City Administrative Code to be relocated at any time shall be eligible to be relocated to a site within a radius of five hundred feet from its licensed location, the "catchment area", provided such site is identified by the licensee and meets the siting criteria applicable to the renewal of licenses in subparagraph a of paragraph two of subdivision d of section 20-231.

If the department of transportation determines that there is no site within such catchment area to which a newsstand may be relocated in accordance with subparagraph (a) of paragraph five of subdivision k of section 20-231, the licensee of such newsstand may apply for a license for a new newsstand in accordance with the applicable provisions of law.

A newsstand shall not be eligible for a renewal if the area of the sidewalk occupied by it exceeds seventy-two square feet or such newsstand exceeds nine feet in height or the department of transportation determines that the newsstand poses an obstruction to the free use of sidewalks by pedestrians at the time of review.

(a) A newsstand that was first licensed on or after the first day of August, nineteen hundred ninety-one shall not pose an obstruction to the free use of the sidewalks by pedestrians if the location of such newsstand does not

(i) reduce the area maintained on the sidewalk for pedestrian movement below a width of nine and one-half feet.

(ii) place the proposed newsstand within five feet of a fire hydrant.

(iii) create a level of service at the proposed location for the peak fifteen minutes of the peak hour of a pedestrian flow rate equal to or greater than eleven people per minute per linear foot of clear path, as determined by the department of transportation.

(iv) place the proposed newsstand within fifteen feet of an entrance to or exit from a subway.

(v) extend into the area encompassed by the extension of the property lines from the buildings to the curb at the intersection of two streets and the area ten feet on either side of such lines.

(vi) extend into a bus stop.

(vii) otherwise create a hazardous condition. For purposes of this subparagraph, a hazardous condition shall include, but not be limited to, the location of a newsstand less than one foot, six inches from the curb, under a fire escape, within ten feet of a driveway or parking lot or within two feet from underground access points, such as utility access openings, ventilation grills, or cellar doors.

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(b) A newsstand that was first licensed prior to the first day of August, nineteen hundred ninety-one shall not pose an obstruction to the free use of the sidewalks by pedestrians if the location of such newsstand does not

(i) reduce the area maintained on the sidewalk for pedestrian movement below a width of nine and one-half feet.

(ii) place the proposed newsstand within five feet of a fire hydrant.

(iii) create a level of service at the proposed location for the peak fifteen minutes of the peak hour of a pedestrian flow rate equal to or greater than eleven people per minute per linear foot of clear path, as determined by the department of transportation.

(iv) violate the restrictions on the location of newsstands in subdivision f of this section, if such newsstand is located at the rear or side of a subway entrance or exit kiosk.

(v) extend into the area encompassed by the extension of the property lines from the buildings to the curb at the intersection of two streets.

(vi) otherwise create a hazardous condition. For purposes of this subparagraph, a hazardous condition shall include, but not be limited to, the location of a newsstand less than one foot, six inches from the curb, under a fire escape, within ten feet of a driveway or parking lot or within two feet from underground access points, such as utility access openings, ventilation grills, or cellar doors.

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**APPENDIX 4
Proposal Cover Sheet**

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

CERTIFICATION BY CORPORATE OFFICER OR PARTNER

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

Signature: _____

Name: _____

Title: _____

Date: _____

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

APPENDIX 5
Cash Flow Analysis

Proposers must use this form to submit the cash flow analysis required in Section III, A, 4. Additional cash flow analyses may also be provided.

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

Abbreviations: BSS = Bus Stop Shelter; APT = Automatic Public Toilet; NS = Newsstand; TR = Trash receptacle; I/CK = Information/Computer kiosk; NR = Multi-rack news rack

I. REVENUE ESTIMATES

Table A—Projected Revenue by Type of Franchise Structure

	ITEM	AMOUNT
	Projected Average Annual Ad Revenue Per Ad Panel Citywide	
a	BSS	
b	APT	
c	NS	
	Projected Average Annual Corporate Sponsorship Revenue Per Franchise Structure Citywide	
d	TR	
e	I/CK	
	Projected Average Annual User and Other Fees Per Franchise Structure Citywide	
f	APT	
g	I/CK	
	Other Revenue (specify):	

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

Complete Table B as per the Proposal. For the purposes of this analysis, assume that the minimum number of BSSs in service will be 3300 and that the maximum number of APTs will be 20.

Year	1	2	3	4	5	6	7	8	9	10-20
BSS										
NS										
APT										

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

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For the purposes of this analysis, assume that there will be 2 ad panels on each BSS. Provide the number of ad panels on each NS and APT as per the Proposal:

NS = _____

APT = _____

In Table C, below, provide the total number of ad panels that will be in service and producing revenue for each type of Franchise Structure in each year. Assume that an ad panel will begin producing revenue in the year after the construction of the appurtenant Franchise Structure (see Table K). For the purposes of this table, deduct 22.5% of the total number of ad panels for each type of Franchise Structure required as the City's set aside for public service advertisements and marketing partnership advertisements.

Year	1	2	3	4	5	6	7	8	9	10-20
BSS										
NS										
APT										

Table D—Revenue Forecast, Year by Year

Calculate revenue forecasts using the following formulas. List the results in Table D, below.

For BSSs: Revenue = (projected revenue per ad panel from Table A, line a) x (total number of ad panels in service in each year from Table C)

For NSs: Revenue = (projected revenue per ad panel from Table A, line c) x (total number of ad panels in service in each year from Table C)

For APTs: Revenue = [(projected revenue per ad panel from Table A, line b) x (number of ad panels in service in each year from Table C)] + [(projected revenue from Table A, line f) x (the number of structures in service in each year from Table B)]

Year	1	2	3	4	5	6	7	8	9	10
BSS										
NS										
APT										
Other Revenue										
Total										

Year	11	12	13	14	15	16	17	18	19	20
BSS										
NS										
APT										
Other Revenue										
Total										

II. ANNUAL OPERATING AND OVERHEAD EXPENSES

Table E— Annual Maintenance Expenses

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

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

Table F -- Cost of Removal of Structures

List the removal cost for a single structure of each type.

Type	\$ Amount	Type	\$ Amount
BSS		TR	
APT		I/CK	
NS		NR	

Table G --Maintenance Expenses, Year by Year

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

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

Year	11	12	13	14	15	16	17	18	19	20
Am't										

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Table H—Annual Overhead Expenses

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

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

Table I—Overhead Expenses, Year by Year

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

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

Year	11	12	13	14	15	16	17	18	19	20
Am't										

III. CAPITAL COSTS

Table J—Capital Costs of Franchise Structures

	ITEM	AMOUNT
	BUS STOP SHELTERS	
1	Manufacture and assembly of one BSS	
2	Installation of one BSS (including permits, utility hook-ups, labor, delivery, set-up)	
3	Other costs (specify):	
4	Unit cost (Add Lines 1 through 3)	
5	Proposed number of BSSs (3300 minimum)	
6	Total construction cost for BSSs (Line 4 x Line 5)	

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Table J—Capital Costs, continued

	AUTOMATIC PUBLIC TOILETS	
7	Manufacture and assembly of one APT: above-ground structure	
8	Manufacture and assembly of one APT: functional unit	
9	Installation of one APT: (including foundation, permits, utility hook-ups, labor, delivery, set-up)	
10	Other costs (specify):	
11	Unit cost (Add Lines 7 through 10)	
12	Proposed number (20 maximum)	
13	Total construction cost for APTs (Line 11 x Line 12)	
	NEWSSTANDS	
14	Manufacture and assembly of one NS	
15	Installation of one NS (including permits, utility hook-ups, labor, delivery, set-up)	
16	Other costs (specify):	
17	Unit cost (Add Lines 14 through 16)	
18	Proposed number (330 minimum)	
19	Total construction cost for NSs (Line 17 x Line 18)	
20	TOTAL CONSTRUCTION COSTS (Add Lines 6, 13, & 19)	
	FINANCING	
21	Amount of construction costs to be borrowed	
22	Typical number of years over which Line 21 amount will be financed	
23	Estimated interest rate	
	PUBLIC SERVICE STRUCTURES	
	TRASH RECEPTACLES	
24	Manufacture and assembly of one TR	
25	Installation of one TR (including labor, delivery, set-up)	
26	Other costs (specify):	
27	Unit cost (Add Lines 24 through 26)	
	INFORMATION/COMPUTER KIOSKS	
28	Manufacture and assembly of one I/CK	
29	Installation of one I/CK (including permits, utility hook-ups, labor, delivery, set-up)	
30	Other costs (specify):	
31	Unit cost (Add Lines 28 through 30)	
	MULTI-RACK NEWSRACKS	
32	Manufacture and assembly of one NR	
33	Installation of one NR (including permits, labor, delivery, set-up)	

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34	Other costs (specify):	
35	Unit cost (Add Lines 32 through 34)	

Table K—Construction Schedule

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

Year	1	2	3	4	5	6	7	8	9	10	Total
BSS											
NS											
APT											

Table L—Capital Costs, Year by Year

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

Year	1	2	3	4	5	6	7	8	9	10
BSS										
NS										
APT										

Year	11	12	13	14	15	16	17	18	19	20
BSS										
NS										
APT										

Table M--Summary and Cash Flow Analysis

Complete this table based on the previous tables.

Table M, below, to be based on control of 80% of the advertising space.

	Year	1	2	3	4	5	6	7	8	9	10	Subtotal
Revenue Projections												
BSS Ad revenue												
NS Ad revenue												
APT Ad revenue												
APT User Fees												
Other Revenue												
A. Total Gross Revenue												
Operating Expenses												
Maintenance Expenses												
Overhead Expenses												
B. Total Operating Expenses												
C. Operating Income (A - B)												

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Capital Costs											
BSS											
NS											
APT											
Finance Costs (if any)											
D. Total Capital Costs											
E. Net Income (C - D)											
Year	11	12	13	14	15	16	17	18	19	20	Total
Revenue Projections											
BSS Ad revenue											
NS Ad revenue											
APT Ad revenue											
Other Revenue											
A. Total Gross Revenue											
Operating Expenses											
Maintenance Expenses											
Overhead Expenses											
B. Total Operating Expenses											
C. Operating Income (A - B)											
Capital Costs											
BSS											
NS											
APT											
Finance Costs (if any)											
D. Total Capital Costs											
E. Net Income (C - D)											

APPENDIX 6
Affirmation

Proposer's Name: _____

The above named Proposer affirms, declares, and certifies:

1. That such Proposer, or if the Proposer is a corporation any person signing on behalf of such Proposer who is of lawful age, is the only one interested in this Proposal; and that no person, firm or corporation other than herein above named has any interest in this Proposal, or in the Franchise Contract proposed to be taken.
2. By submission of this Proposal, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint Proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:
 - (a) The terms of this Proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such terms with any other Proposer prior to the opening, directly or indirectly, to any other Proposer or to any competitor; and
 - (b) Unless otherwise required by law, the terms that have been quoted in this Proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and
 - (c) No attempt has been made or will be made by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a Proposal for the purpose of restricting competition.
3. That no Council Member or other officer or employee or person whose salary is payable in whole or in part from the City treasury is directly or indirectly interested in this Proposal, or to the agreement to which it is related, or in any of the profits thereof.
4. That such Proposer is not in arrears with the City of New York upon any debt, obligation, or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, nor disqualified by any Department of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Proposer to receive a public Franchise Contract except as is indicated in an attachment hereto.
5. That from the date of the issuance of the RFP, neither Proposer nor any of its Key People¹, or any consultant, agent or representative, lobbyist or lawyer on Proposer's behalf, will

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

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

(Signature of the person who signed the Proposal)

(Title of the person who signed the Proposal)

Subscribed and sworn to before me
this _____ day of _____, 20__

Notary Public

APPENDIX 7

Acknowledgment of Addenda

THIS PAGE MUST BE SUBMITTED WITH YOUR PROPOSAL.

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

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

- ADDENDUM # 1, DATED _____, 20__
- ADDENDUM # 2, DATED _____, 20__
- ADDENDUM # 3, DATED _____, 20__
- ADDENDUM # 4, DATED _____, 20__
- ADDENDUM # 5, DATED _____, 20__
- ADDENDUM # 6, DATED _____, 20__
- ADDENDUM # 7, DATED _____, 20__
- ADDENDUM # 8, DATED _____, 20__
- ADDENDUM # 9, DATED _____, 20__
- ADDENDUM # 10, DATED _____, 20__
- ADDENDUM # 11, DATED _____, 20__
- ADDENDUM # 12, DATED _____, 20__

PART II: ___ NO ADDENDA TO THIS RFP WERE RECEIVED.

_____DATE

PROPOSER'S NAME

PROPOSER'S SIGNATURE

APPENDIX 8
Proposal Package Checklist

I. Sealed Package

A. One signed original and twenty (20) copies of each of the following:

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

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

1. VENDEX Business Entity Questionnaire for each participating firm
2. VENDEX Principal Questionnaires for each principal of each participating firm
3. VENDEX Subcontractor Questionnaire for each subcontractor
4. Affirmation for each participating firm and subcontractor
5. MacBride Principles signed by each participating firm and subcontractor
6. Proposer's Affidavit

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

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

IV. Scale Models - One set of scale models

APPENDIX 9
MacBride Principles

MacBRIDE PRINCIPLES PROVISIONS
FOR NEW YORK CITY CONTRACTORS

ARTICLE I MacBRIDE PRINCIPLES

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

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

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

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

PART A

In accordance with Section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either: (a)

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have no business operations in Northern Ireland, or **(b)** shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of this compliance with such principles.

PART B

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

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

ARTICLE II ENFORCEMENT OF ARTICLE I

The Contractor agrees that the covenants and representations in Article I above are material conditions to this Contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the

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

APPENDIX 10
Investigation Clause

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposer and the undersigned officer to criminal charges, including charges for violation of New York State Penal Law Sections 175.35 (Offering a False Statement for Filing) and 210.40 (Sworn False Statement) and/or Title 18 U.S.C. Sections 1001 (False or Fraudulent Statement) and 1341 (Mail Fraud).

Signature
Proposer Name

Date

Sworn to before me this ____
day of _____, 20__

Notary Public

Appendix 12

Newsstand Interior Design Criteria

The following Newsstand criteria must be incorporated into proposed Newsstand designs. Proposers are encouraged to consult with members of the Newsstand industry to gain further input and understanding of operational and functional needs of Newsstand operators.

1. Modular shelving, storage and display cases that can be adjusted by individual Newsstand operators to address business needs. Shelving, storage and display cases must reflect the range and variety of items operators are permitted to sell at Newsstands, including but not limited to newspapers, magazines, prepackaged food, cigarettes, film, batteries and beverages. Display cases must have appropriate options for self service and operator controlled product sales.
2. Space for standard cash box in a secure accessible location when Newsstand operator is conducting business.
3. Internal lighting that is operated by a wall switch.
4. Optional space to accommodate a commercial glass door refrigerator with a minimum width of 21" (unit provided by Newsstand operator).
5. A vent to allow circulation.
6. Optional space to accommodate a thru-wall 5,000 BTU air conditioner (unit provided by Newsstand operator).
7. Sufficient electrical outlets and amps to support appliances, including but not limited to lottery machine, refrigerator, air conditioner, and heater.
8. Sufficient counter and service hookups to accommodate Lotto machine if desired by operator.

Appendix 13

Newsrack Criteria

§19-128.1 Newsracks. a. Definitions. For purposes of this section, the following terms shall have the following meanings:

1. “Newsrack” shall mean any self-service or coin-operated box, container or other dispenser installed, used or maintained for the display, sale or distribution of newspapers or other written matter to the general public.
2. “Person” shall mean a natural person, partnership, corporation, limited liability company or other association.
3. “Sidewalk” shall mean that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines, but not including the curb, intended for the use of pedestrians.
4. “Crosswalk” shall mean that part of a roadway, whether marked or unmarked, which is included within the extension of the sidewalk lines between opposite sides of the roadway at an intersection.
5. “Crosswalk area” shall mean that area of the sidewalk bounded by the extension of the lines of a crosswalk onto the sidewalk up to the building or property line.
6. “Corner area” shall mean that area of a sidewalk encompassed by the extension of the building lines to the curb on each corner.
7. “Board” shall mean the environmental control board of the city of New York.
8. “Close proximity” shall mean a distance adjacent to an area designed to facilitate safe ingress or egress that will reasonably permit and protect such safe ingress or egress.

b. Requirements. It shall be a violation for any person to place, install or maintain a newsrack on any sidewalk unless such newsrack is in compliance with the provisions of this section.

1. The maximum height of any newsrack containing a single publication shall be fifty inches. The maximum width of any such newsrack shall be twenty-four inches. The maximum depth of any such newsrack shall be twenty-four inches.
2. No newsrack shall be used for advertising or promotional purposes, other than announcing the name and/or website of the newspaper or other written matter offered for distribution in such newsrack.
3. Each newsrack used to sell newspapers or other written matter shall be equipped with a coin return mechanism in good working order so as to permit a person to secure a refund in the event that the newsrack malfunctions.
4. The owner or person in control of each newsrack shall affix his or her name, address, telephone number, and email address, if any, on the newsrack in a readily visible location. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.
5. Subject to the limitations set forth in this section, newsracks shall be placed near a curb.
6. A newsrack shall not be placed, installed or maintained: (a) within fifteen feet of any fire hydrant; (b) in any driveway or within close proximity of any driveway; (c) in any curb cut designed to facilitate street access by disabled persons or within two feet of any such curb cut; (d) within close proximity of the entrance or exit of any railway station or subway station; (e) within any bus stop; (f) within a crosswalk area; (g) within a corner area or within five feet of any corner area; (h) on any surface where such installation or maintenance will cause damage to or will interfere with the use of any pipes, vault areas, telephone or electrical cables or other similar locations; (i) on any cellar door, grating, utility maintenance cover or other similar locations; (j) on, in or over any part of the roadway of any public street; (k) unless eight feet of

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sidewalk width is preserved for unobstructed pedestrian passage; (l) in any park or on any sidewalk immediately contiguous to a park where such sidewalk is an integral part of the park design, such as the sidewalks surrounding Central Park or Prospect Park; (m) on any area of lawn, flowers, shrubs, trees or other landscaping or in such a manner that use of the newsrack would cause damage to such landscaping; or (n) where such placement, installation or maintenance endangers the safety of persons or property. Any limitation on the placement or installation of newsracks pursuant to this paragraph shall be no more restrictive than necessary to ensure the safe and unobstructed flow of pedestrian and vehicular traffic, and otherwise to assure the safety of persons and property.

7. Every newsrack shall be placed or installed in a manner that will ensure that such newsrack cannot be tipped over.

c. Notification to city of location of newsrack. 1. Where a newsrack has been placed or installed on a sidewalk before the effective date of this section, the owner or person in control of such newsrack shall, within sixty days after such effective date, submit to the commissioner a form identifying: (i) the address of such newsrack; (ii) the name of the newspaper(s) or written matter to be offered for distribution in such newsrack; and (iii) the name, address, telephone number, and email address of the owner or person in control of such newsracks; and representing that such newsracks comply with the provisions of this section.

2. Subsequent to the initial notification requirements set forth in paragraph 1 of this subdivision, the owner or person in control of any newsrack shall submit the information set forth in paragraph one of this subdivision four times a year to the commissioner in accordance with a quarterly notification schedule to be established by the commissioner.

3. Notification to the city, as required by paragraphs 1 and 2 of this subdivision, may be submitted to the department electronically.

d. Indemnification and insurance. 1. Each person who owns or controls a newsrack placed or installed on any sidewalk shall indemnify and hold the city harmless from any and all losses, costs, damages, expenses, claims, judgments or liabilities that the city may incur by reason of the placement, installation or maintenance of such newsrack, except to the extent such damage results from the negligence or intentional act of the city.

2. Each person who owns or controls a newsrack on any sidewalk shall maintain a general liability insurance policy naming the city of New York, and its departments, boards, officers, employees and agents as additional insureds for the specific purpose of indemnifying and holding harmless those additional insureds from and against any and all losses, costs, damages, expenses, claims, judgments or liabilities that result from or arise out of the placement, installation and/or the maintenance of any newsrack. The minimum limits of such insurance coverage shall be no less than three hundred thousand dollars combined single limit for bodily injury, including death, and property damage, except that any person who maintains an average of one hundred or more newsracks at any one time shall maintain such minimum insurance coverage of one million dollars. An insurance certificate demonstrating compliance with the requirements of this subdivision shall be submitted annually by December 31st to the commissioner by the person who owns or controls such insured newsracks. Should said policy be called upon to satisfy any liability for damages covered by said policy, the policy must be of such a nature that the original amount of coverage is restored after any payment of damages under the policy. Failure to maintain a satisfactory insurance policy pursuant to this subdivision, or failure to submit an annual insurance certificate to the commissioner pursuant to this subdivision, shall be deemed a violation of this section subject to subdivision f of this section.

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e. Maintenance, continuous use, repair and removal. 1. Each newsrack shall be maintained in a clean and neat condition and shall be kept in good repair. Any person who owns or is in control of a newsrack shall be required to monitor each newsrack so that it is kept clean and free of graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions and is kept in good repair. Such person shall also use best efforts to ensure that each newsrack under his or her ownership or control is not used as a depository for the placement of refuse and shall be required to remove any refuse placed within such newsrack within twenty-four hours of being made aware of such condition.

2. In no event shall the owner or person in control of a newsrack fail to keep such newsrack supplied with written matter for a period of more than seven consecutive days without securing the door so as to prevent the deposit of refuse therein. In no event shall such newsrack remain empty for a period of more than twenty-one consecutive days.

3. Any newsrack that has been damaged or vandalized shall be repaired, replaced or removed by the owner or person in control of such newsrack within ten days of receipt of notice of such damage or vandalism. If such newsrack has been damaged or vandalized so as to constitute a danger to persons or property, it shall be made safe within a reasonable time following notice of such condition.

4. Any damage to city property resulting from the placement, installation, maintenance or removal of a newsrack shall be repaired promptly by the owner or person in control of such newsrack. If a newsrack is removed from its location on a sidewalk, the owner or person in control of such newsrack shall be responsible for restoring the sidewalk and any other affected city property to the condition existing prior to installation of that newsrack.

f. Enforcement. 1. (a) Whenever any newsrack is found to be in violation of this section, the commissioner shall issue a notice of correction by affixing it to such newsrack specifying the date and nature of the violation and shall send written notification, by regular mail, to the owner or person in control of the newsrack. Such person shall within seven business days from the date of receipt of notification via regular mail cause the violation to be corrected.

(b) If an owner or other person in control of a newsrack fails to comply with a notice of correction issued pursuant to subparagraph a of this subdivision or an order by the commissioner to remove served pursuant to paragraph three of this subdivision, a notice of violation returnable to the board shall be served on such owner or person in control of such newsrack. If the return date of the notice of violation is more than five business days after the service of such notice, the board shall, upon the request of the respondent, in person at the office of the board, provide a hearing on such violation prior to such return date and no later than five business days after the date of such request. At the time set for such hearing, or at the date to which such hearing is continued, the board shall receive all evidence relevant to the occurrence or non-occurrence of the specified violation(s), the compliance or noncompliance with any of the provisions of this section, and any other relevant information. Such hearing need not be conducted according to technical rules relating to evidence and witnesses. Oral evidence shall be taken only on oath or affirmation. Within five business days after the conclusion of the hearing, the board shall render a decision, based upon the facts adduced at said hearing, whether the newsrack violates this section. The decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The board shall send to the owner or person in control of the newsrack by regular mail, a copy of its decision and order.

2. If the board renders a decision upholding the finding of a violation against the respondent upon default or after a hearing held pursuant to paragraph one of this subdivision, and the violation is not remedied within seven days of receipt of the decision of the board, the commissioner or his or her designee is authorized to provide for the removal of such newsrack

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and any contents thereof to a place of safety. If such newsrack and any contents thereof are not claimed within thirty days after their removal by a person entitled to their return, they shall be deemed to be abandoned and may be either sold at a public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of, and the owner or person in control shall be liable to the City for the costs of removal and storage and shall be subject to a civil penalty pursuant to paragraph five of subdivision f of this section. Newsracks and the contents thereof that are removed pursuant to this subparagraph shall be released to the owner or other person lawfully entitled to possession upon payment of the costs for removal and storage and any civil penalty or, if an action or proceeding concerning the violation is pending, upon the posting of a bond or other form of security acceptable to the department in an amount that will secure the payment of such costs and any penalty that may be imposed hereunder.

3. The commissioner may, upon notice, serve an order upon the owner or other person in control of a newsrack requiring such person to remove or cause to be removed such newsrack within seven business days of the issuance of such order where such removal is required because the site or location at which such newsrack is placed is used or is to be used for public utility purposes, public transportation, or public safety purposes, or when such newsrack unreasonably interferes with construction activities in nearby or adjacent buildings, or if removal is required in connection with a street widening or other capital project or improvement. If such person does not remove such newsrack within seven business days of the issuance of such order, the provisions contained in subparagraph b of paragraph one of this subdivision and paragraph two of this subdivision regarding issuance of a notice of violation and alternatives for removal, storage, abandonment, disposal, and release, shall apply.

4. Notwithstanding any other provision of law to the contrary, if a newsrack has been deemed to have been abandoned in accordance with this paragraph, the commissioner, his or her designee, an authorized officer or employee of any city agency or a police officer is authorized to provide for the removal of such newsrack and may either be sold at public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of.

A newsrack shall be deemed to have been abandoned for purposes of this paragraph if the name, address or other identifying material of the owner or other person in control of such newsrack is not affixed to such newsrack as required by paragraph four of subdivision b of this section.

5. (a) Where emergency circumstances exist and the commissioner or his or her designee gives notice to the owner or other person in control of a newsrack to remove such newsrack, such person shall comply with such notice. For the purposes of this paragraph, emergency circumstances shall mean circumstances which present an imminent threat to public health or safety.

(b) If any owner or other person in control of a newsrack does not remove such newsrack when directed to do so pursuant to the provisions of subparagraph a of paragraph five of this subdivision, or if circumstances are such that public safety requires the immediate removal of a newsrack and it is not reasonable to give the owner or other person in control of such newsrack notice prior to removal, the commissioner or his or her designee may provide for the removal of such newsrack to a place of safety. Unless an administrative proceeding brought pursuant to subparagraph c of paragraph five of this subdivision has terminated in favor of such owner or other person in control of such newsrack, such owner or other person in control of such newsrack may be charged with the reasonable costs of removal and storage payable prior to the release of such newsrack and the contents thereof.

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(c) If an owner or other person in control of a newsrack fails to comply with a notice issued pursuant to subparagraph a of this paragraph to remove such newsrack, a notice of violation returnable to the board shall be served on such owner or person in control of such newsrack. If the newsrack has been removed by the city pursuant to subparagraph b of this paragraph, such notice of violation shall be served immediately after removal, and, if the return date of the notice of violation is more than five business days after the service of such notice, the board shall, upon the request of the respondent, in person at the office of the board, provide a hearing on such violation prior to such return date and no later than five business days after the date of such request. The hearing shall take place under the provisions set forth in subparagraph b of paragraph one of this subdivision and a decision shall be rendered by the board within five business days after the conclusion of the hearing. If a decision is rendered at such hearing that emergency circumstances did not exist, such newsrack shall be returned within ten days to the location from which it was removed by the commissioner or his or her designee. If a decision is rendered against the respondent upon default or after a hearing that such emergency circumstances existed, such newsrack and the contents thereof shall be released to the owner or other person lawfully entitled to possession. If, after a board decision that removal was proper, such newsrack and any contents thereof are not claimed within thirty days after the date of removal by a person entitled to their return, such newsrack and any contents thereof shall be deemed abandoned and may be either sold at a public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency, or otherwise disposed of.

6. Any owner or person in control of a newsrack found to be in violation of any provision of this section shall, after a board decision has been issued upon default or after a hearing, be subject to a civil penalty in the amount of no less than one hundred dollars and no more than five hundred dollars for each violation.

7. The commissioner, shall remove or cause to be removed from any sidewalk for a period of three consecutive months, every newsrack and the contents thereof under the ownership or control of any person who repeatedly violates any provision or provisions of this subdivision. For purposes of this paragraph, a person shall be deemed to have repeatedly violated this section if such person has been determined by the board, upon default or after a hearing, to have violated the provisions of this section ten or more times within any-six month period and that person has failed to pay three or more civil penalties imposed during that same time period. The department shall maintain a record of all persons who repeatedly violate any provision or provisions of this subdivision. In the event that the commissioner removes or causes to be removed all newsracks and the contents thereof under the ownership or control of any person based upon this paragraph, such person shall be permitted to replace all such newsracks at the locations from which they were removed upon payment in full of all outstanding civil penalties imposed for violations of this section and the reasonable costs of removal and storage, provided that such newsracks meet the requirements of this section. If any newsracks or contents thereof removed pursuant to this paragraph are not claimed within thirty days after the expiration of the three-month removal period, such newsracks or the contents thereof shall be deemed abandoned and may be either sold at public auction after having been advertised in the City Record, the proceeds thereof being paid into the general fund, used or converted for use by the department or another city agency or otherwise disposed of.

8. In giving any notice of correction or serving any commissioner's order required under this section, except as otherwise provided by law, the commissioner may rely on the validity of any address (a) posted on the newsrack pursuant to paragraph four of subdivision b of this section as the address of the owner or person in control of the newsrack, or (b) submitted to the department

pursuant to subdivision c of this section, and shall provide such notice by regular mail. If the owner of a newsrack or person in control of a newsrack shall have failed to comply with paragraph four of subdivision b or with subdivision c of this section, the commissioner shall make reasonable efforts to ascertain the identity and address of the owner or person in control of such newsrack for the purpose of giving any required notice, and having done so, may take action as if any required notice had been given.

9. Nothing in this section shall preclude the immediate removal of a newsrack when otherwise authorized by law.

g. Severability. If any subdivision, paragraph, subparagraph, sentence or clause of this section is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section.

Section 2-08 Newsracks

(a) **Definitions.** For purposes of this section, the following terms shall have the following meanings:

(1) **Newsrack.** “Newsrack” shall mean any self-service or coin-operated box, container or other dispenser installed, used or maintained for the display, sale or distribution of newspapers or other written matter to the general public.

(2) **Person.** “Person” shall mean a natural person, partnership, corporation, limited liability company or other association.

(3) **Sidewalk.** “Sidewalk” shall mean that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent property lines, but not including the curb, intended for the use of pedestrians.

(4) **Crosswalk.** “Crosswalk” shall mean that part of a roadway, whether marked or unmarked, which is included within the extension of the sidewalk lines between opposite sides of the roadway at an intersection.

(5) **Crosswalk area.** “Crosswalk area” shall mean that area of the sidewalk bounded by the extension of the lines of a crosswalk onto the sidewalk up to the building or property line.

(6) **Corner area.** “Corner area” shall mean that area of a sidewalk encompassed by the extension of the building lines to the curb on each corner.

(7) **Board.** “Board” shall mean the environmental control board of the city of New York.

(8) **Multiple-vending newsrack.** A newsrack designed to hold two or more different publications.

(b) **Placement.**

(1) Manner.

(i) Newsracks shall be weighted down on all sidewalks in such a way as to insure that the newsrack cannot be tipped over.

(ii) Newsracks shall not be bolted to the sidewalk, except that multiple-vending newsracks may be bolted pursuant to a permit from the Department, except as provided in paragraph 2 of this subdivision b.

(iii) A newsrack may not be chained to property owned or maintained by the city, except that newsracks may be chained to lampposts (except for decorative lampposts). A newsrack so chained must not be in an unlawful location as specified in subdivision (c) of this section. To the extent an owner or other person in control of a newsrack seeks to chain such newsrack to property not owned or maintained by the city, the consent of the owner of or person responsible for such property is required. In all cases where the use of chains to secure newsracks is permitted, such chains shall be made of galvanized steel with a plastic or rubber protective coating, at least 0.14 inches thick, and shall allow a distance of no more than eight (8) inches between the newsrack and the street furniture to which it is chained.

(2) Distinctive sidewalks. Multiple-vending newsracks may be bolted to sidewalks comprised of distinctive material, including, but not limited to, granite, terrazzo or bluestone, pursuant to a permit from the Department and provided that the written permission of the property owner or other entity that installed the distinctive sidewalk is obtained in advance of such bolting.

(3) Sidewalk repair and restoration. An owner or other person in control of a newsrack shall be responsible for any damage caused or repairs necessitated by the installation, presence or maintenance of such newsrack. Such owner or other person also shall be responsible for any damage caused or repairs necessitated by the removal of a newsrack by either such owner or other person or by an authorized officer or employee of the Department or of any city agency who is designated by the Commissioner, or by a police officer. Such repairs shall be made promptly and in accordance with the Department's specifications.

(4) Notification to the Department of location of newsracks. Where a newsrack has been placed or installed on a sidewalk before the effective date of section 19-128.1 of the New York City Administrative Code, the owner or other person in control of a newsrack shall, within sixty (60) days after the effective date of section 19-128.1 of the New York City Administrative Code, notify the Department by facsimile, electronically or by other means as directed by the Commissioner and on a form approved or provided by the Commissioner, of

(i) the location of such newsrack;

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- (ii) the name of the newspaper(s) or written matter to be offered for distribution in such newsrack; and
- (iii) the name, address, telephone number, and email address of the owner or person in control of such newsracks;

and shall represent that such newsracks comply with the provisions of this section and section 19-128.1 of the New York City Administrative Code. Subsequent to the initial notification, the owner or person in control of a newsrack shall submit the above information to the Department on March 30, June 30, September 30 and December 30 of each year. An owner or other person in control of a newsrack placed or installed on a sidewalk after the effective date of section 19-128.1 of the New York City Administrative Code shall, within sixty (60) days after the effective date of section 19-128.1 of the New York City Administrative Code or within ten (10) days of the installation of any such newsrack, whichever is later, provide to the Department the information required above and the indemnification notification and insurance certification required pursuant to subdivision f of this section. Subsequent notification shall be made on a quarterly basis as provided above.

(c) **Unlawful locations.** No owner or person in control of a newsrack shall install, use or maintain any newsrack in any of the following locations:

- (1) within fifteen (15) feet of any fire hydrant;
- (2) in any driveway or within five (5) feet of any driveway;
- (3) in any curb cut designed to facilitate street access by disabled persons or within two feet of any such curb cut;
- (4) within fifteen (15) feet of the entrance or exit of any railway station or subway station, except that a newsrack that otherwise complies with this subdivision may be placed against the rear of the station entrance or exit, but not against the sides;
- (5) within any bus stop;
- (6) within a crosswalk area;
- (7) within a corner area or within five (5) feet of any corner area;
- (8) on any surface where such installation or maintenance will cause damage to or interference with the use of any pipes, vault areas, telephone or electrical cables or other similar locations;
- (9) on any cellar door, grating, utility maintenance cover or other similar locations;
- (10) on, in or over any part of the roadway of any public street;
- (11) unless eight (8) feet of sidewalk width is preserved for unobstructed pedestrian passage;
- (12) in any park or on any sidewalk immediately contiguous to a park where such sidewalk is an integral part of the park design;
- (13) on any area of lawn, flowers, shrubs, trees or other landscaping or in such a manner that use of the newsrack would cause damage to such landscaping;
- (14) where such placement, installation or maintenance endangers the safety of persons or property;
- (15) at any distance less than eighteen (18) inches or more than twenty-four (24) inches from the face of the curb, measured to the side of the newsrack closest to the curb (This paragraph shall not apply to a newsrack placed against the rear of the entrance or exit of a subway or railway as provided in paragraph 4, above.);

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- (16) within five (5) feet of a canopy; and
- (17) within fifteen (15) feet of a sidewalk newsstand.

(d) **Size, shape and appearance.**

(1) **Dimensions.** No newsrack may be higher than fifty (50) inches, wider than twenty-four (24) inches or deeper than twenty-four (24) inches. Notwithstanding the above, no multiple-vending newsrack shall be higher than sixty (60) inches, wider than ninety (90) inches or deeper than thirty-six (36) inches.

(2) **Identifying information required.** The owner or person in control of each newsrack shall affix his, her or its name, address, telephone number and email address, if any, on the newsrack in a readily visible location. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.

(3) **Advertisements prohibited.** The surfaces of the newsrack shall not include any advertisement, whether painted, posted, or otherwise affixed thereto, or be used for promotional purposes, except for announcing the name and/or website of the newspaper or other written matter offered for distribution in such newsrack.

(4) **Electricity.** No electricity shall be run into a newsrack nor shall any connection for electrical purposes be installed in or on a newsrack.

(e) **Maintenance.** The owner or person in control of a newsrack shall be responsible for the following:

(1) **Cleaning.** All newsracks shall be maintained in a clean and neat condition and shall be kept in good repair.

(2) **Painting.** All painted newsracks shall be repainted as needed.

(3) **Graffiti.** All surfaces of newsracks shall be maintained free of graffiti and other unauthorized writing, painting, drawing or other markings or inscriptions, including, but not limited to, stickers and flyers.

(4) **Refuse.** No refuse shall accumulate in a newsrack nor shall any newsrack deteriorate into an unsanitary condition. The owner or person in control of a newsrack shall remove refuse within twenty-four (24) hours of being made aware of the condition.

(5) **Damage.** A damaged or vandalized newsrack shall be repaired, replaced or removed within ten (10) days of receipt of notice of the damage or vandalism, except that if such damaged newsrack poses a danger to persons or property, it shall be made safe within twenty-four (24) hours following notice.

(6) **Continuous use.** In no event shall the owner or person in control of a newsrack fail to keep such newsrack supplied with written matter for a period of more than seven (7) consecutive days without securing the door so as to prevent the deposit of refuse

therein. Notwithstanding the securing of the door, in no event shall such newsrack remain empty for a total period of more than twenty-one (21) consecutive days. Any newsrack empty for longer than such period shall be deemed abandoned.

(f) Indemnification and insurance.

(1) Indemnification. The owner or person in control of a newsrack placed or installed on any sidewalk shall indemnify and hold the City harmless from any and all losses, costs, damages, expenses, claims, judgments or liabilities that the City may incur by reason of the placement, installation or maintenance of such newsrack, except to the extent such damage results from the negligence or intentional act of the city. In addition to the insurance certificate submitted pursuant to paragraph 3 of this subdivision f, the owner or person in control of a newsrack shall submit by regular mail an indemnification notification on a form provided by the Commissioner.

(2) Insurance. The owner or person in control of a newsrack shall procure and maintain, for as long as the newsrack remains on City property, a commercial general liability insurance policy from an insurer licensed to do business in the State of New York in his or her or its name, which names the City of New York, its departments, boards, officers, employees and agents as additional insureds for the specific purpose of indemnifying and holding harmless those additional insureds from and against any and losses, costs, damages, expenses, claims, judgments or liabilities that result from or arise out of the placement, installation and/or maintenance of such newsrack. The minimum limits of such insurance coverage shall be no less than \$300,000 combined single limit for bodily injury, including death, and property damage, dedicated exclusively to the liabilities relating to such newsracks, except that any person who maintains an average of 100 or more newsracks at any one time shall maintain a minimum insurance coverage of \$1 million dedicated exclusively to such liabilities. All insurance policies shall be endorsed to provide that (a) the City shall have no obligation whatever to provide notice to the insurance company of any occurrence or claim, and that the City's notice to the insurance company of the commencement of a lawsuit against the City, if required, shall be deemed timely if received within 180 days thereof; and (b) notice by any other insured of the commencement of any lawsuit against such insured shall constitute notice on behalf of the City as well.

(3) Insurance certificate. An insurance certificate shall be submitted to the Commissioner by the owner or person in control of a newsrack within sixty (60) days after the effective date of section 19-128.1 of the New York City Administrative Code, and, thereafter, by December 31 of each year or by the expiration date of the policy, whichever is earlier, certifying that the insurance required by paragraph 2 of this subdivision f is in place for all newsracks owned by such person. When a newsrack that is not covered by such insurance is placed or installed on a sidewalk after the effective date of such section 19-128.1, the owner or person in control of such newsrack shall, within sixty (60) days after the effective date of section 19-128.1 of the New York City Administrative Code or within ten (10) days of the installation of such newsrack, whichever is later, provide to the Department the insurance certification required pursuant to this subdivision f. Acceptance by the Commissioner of any insurance certificate, whether or not conforming to the requirements of paragraph 2 of this

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subdivision f, shall not relieve the owner or person in control of a newsrack of his, her or its obligation to actually provide such insurance. The certificate shall provide that no cancellation, termination or alteration shall be made without thirty (30) days' advance written notice to the Department.

(g) Violations and removal.

Violations of the provisions of section 19-128.1 of the Administrative Code or these rules shall be enforced and the newsracks shall be removed by the Commissioner pursuant to provisions of subdivision f of such section 19-128.1 and any other applicable provisions of law. The City shall charge the owner or person in control of a newsrack for the cost of removal and storage. The charge for removal shall be \$50 per newsrack. The storage charge shall be \$1.40 per newsrack per day.

(h) Notices. All notices required to be served on the owner or person in control of a newsrack pursuant to these rules or section 19-128.1 of the Administrative Code shall be served upon the address provided pursuant to the registration provisions in these rules. In the absence of the required registration information, service shall be made on the entity identified on the newsrack or in the publication found in the newsrack.



**Request for Proposals for a
Coordinated Street Furniture Franchise**

PIN Number: #84104MBAD689
Date of Issue: March 26, 2004

Addendum I

Date of Issue: June 11, 2004

Addendum I includes substantive and material changes to the Coordinated Street Furniture Request for Proposal (PIN #: 84104MBAD689). Addendum I amendments are binding changes to the RFP. All proposals must comply with these amendments. Included in Addendum I is a new Affirmation form (Appendix 6R1). Changes to this form are underlined. The amended form, as included in Addendum I, is the only affirmation form that is acceptable from respondents.

1. Section I, Summary (p.2)

Delete final sentence of section and replace with the following (new language is underlined):

Proposals are due on Thursday, August 5, 2004, at 2:00PM, and must be submitted in accordance with the Proposal Package Submission Requirements contained herein.

2. Section II, A, 5: Security Fund, (p. 7)

Delete first sentence and replace with the following (new language is underlined):

Prior to the execution of the Franchise Contract, the Franchisee will be required to deposit with the New York City Comptroller, an amount to be determined by the City, which will be not less than five million dollars (\$5,000,000) in a combination of cash and bonds as shall be determined by the parties, sufficient to ensure the faithful performance by the Franchisee of all conditions, provisions, and requirements of the Franchise Contract.

3. Section III, B, 1: Delivery (p. 22)

Delete first sentence and replace with the following (new language is underlined):

Proposal packages must be received by the Department's Contracts Division, 40 Worth Street, Room 824A, on or before August 5, 2004 at 2:00PM.

4. Section III, B, 1: Delivery (p.22)
Add the following language after Sec. III, B. 1: Delivery

B. 1. 1 Model Packaging

All models should be built to the scale of 1 inch equals 1 foot (1:12) as stipulated in the RFP on page 20. The models should be delivered in opaque packaging with the proposer's name clearly labeled on the outside. Models will be unpacked by Agency personnel so models should be fully assembled when delivered.

B. 1. 2 Scheduling Appointments

Scale models will be delivered by appointment. Proposers will have a one week window to schedule appointments. To schedule delivery appointments proposers should contact Paul Stanton by telephone (212-442-7749) or e-mail (pstanton@dot.nyc.gov) between Monday, July 19, and Thursday, July 22, 2004, during regular business hours.

B. 1. 3 Delivery

Deliveries will be scheduled between Monday, August 9, and Thursday, August 12, 2004. Deliveries will be made to NYCDOT, 59 Maiden Lane, New York, NY (between Nassau and William Streets). A representative from NYCDOT will meet delivery crews at the scheduled time in the lobby of 59 Maiden Lane. Delivery crews should have proper identification. Delivery crews will be escorted to the 34th Floor by the NYCDOT representative to unload their parcels in a secure location. Deliveries may be required to be made at the buildings loading dock. In that event the location at 59 Maiden Lane for meeting the NYCDOT representative will be finalized at the time the appointment is made.

The Department strongly recommends delivery services allot enough time to arrive prior to your scheduled appointment. The Department cannot guarantee another delivery appointment if the originally scheduled appointment is missed.

5. Section III, B, 2: Copies and Format (p. 22)
Add the following language after the first paragraph:

The "required city documents" as required above shall be submitted as a separate package from the proposals and should be clearly labeled.

6. Section III, B, 4: Labeling (pp. 22-23)

After Proposal Due Date and Time, delete June 30, 2004 at 2:00PM and replace with August 5, 2004 at 2:00PM.

**7. Section III, C, 2: Evaluation Procedures, (p. 24)
Add the following language after RFP point chart:**

A total of five preference points are available in the Request for Proposal Evaluation. Preference points are allotted as follows:

Manufactured and assembled in the USA, not in NYC (in accordance with Section III, A, 3.1 of the RFP, p. 19)	2
Manufactured and assembled in NYC (in accordance with Section III, A, 3.1 of the RFP, p. 19)	2
Greater compensation to the City in the initial period, provided total proposed compensation is determined to be in best financial interest to the City (in accordance with Section III, C, 3.4 of the RFP, p.26)	1

8. Section III, C, 2.2: Phase 2: Assessment of Proposer's Ability to Provide Required Service, (p. 24)

Delete paragraph 2.2 and replace with new paragraph 2.2R1 (new language is underlined):

Each proposal that is deemed responsive by the Auditor General will be forwarded to the Evaluation Committee for its review. The Committee will examine and evaluate each proposers business organization, financial fitness, experience with street furniture and the sale & maintenance of outdoor advertising in urban environments. Each proposer will receive a numerical score for this phase. Each proposal receiving a score of 15 or better out of a possible 25 shall advance to the next phase of evaluation. In the event that the total number of proposers achieving a score of 15 is less than three, the next highest proposals will be added in rank order to achieve a minimum pool of three proposals to advance to the next phase of evaluation.

9. Appendix 6: Affirmation (p.56)

Delete Appendix 6 and replace with new Appendix 6R1 (attached)



**Request for Proposals for a
Coordinated Street Furniture Franchise**

PIN Number: #84104MBAD689
Date of Issue: March 26, 2004

Addendum II
Date of Issue: July 15, 2004

Addendum II includes substantive and material changes to the Coordinated Street Furniture Request for Proposal (PIN #: 84104MBAD689). Addendum II amendments are binding changes to the RFP. All proposals must comply with these amendments.

- 1. Section I, Summary (p.2)**
Delete final sentence of section and replace with the following (new language is underlined):

Proposals are due on Tuesday, September 14, 2004 at 2:00PM, and must be submitted in accordance with the Proposal Package Submission Requirements contained herein.

- 2. Section III, B, 1: Delivery (p. 22)**
Delete first sentence and replace with the following (new language is underlined):

Proposal packages must be received by the Department's Contracts Division, 40 Worth Street, Room 824A, on or before Tuesday, September 14, 2004 at 2:00PM.

- 3. Section III, B, 4: Labeling (pp. 22-23)**

After Proposal Due Date and Time, delete August 5, 2004 at 2:00PM and replace with Tuesday, September 14, 2004 at 2:00PM.

- 4. Appendix 5, Table M: Summary and Cash Flow Analysis (p.54)**
Delete the second sentence and replace with the following (new language is underlined):

Table M, below, to be based on control of 77.5% of the advertising space.



**Request for Proposals for a
Coordinated Street Furniture Franchise**

PIN Number: #84104MBAD689
Date of Issue: March 26, 2004

Addendum III

Date of Issue: August 18, 2004

Addendum III includes substantive and material changes to the Coordinated Street Furniture Request for Proposal (PIN #: 84104MBAD689). Addendum III amendments are binding changes to the RFP. All proposals must comply with these amendments.

- 1. Section II, D. 2: Newsstand Build-out (p.12)
Add the following language at the end of Section II, D. 2, following the fifth paragraph.**

Section 241.1 of the Administrative Code provides that a newly licensed newsstand operator (defined as an operator who is issued a license after the effective date of the franchise agreement) shall reimburse the franchisee for the costs of construction and installation of a new newsstand. The reimbursement cost will be the lesser of:

- 1) the unit cost per newsstand as stated in the franchise contract; or
- 2) a standard cost. The standard cost of a newsstand will be \$25,000 for new licenses issued through December 31, 2005, and the standard cost of any future newsstands will be adjusted annually thereafter, beginning January 1, 2006, by the rate of inflation for the previous calendar year based upon the change in the Consumer Price Index Urban (CPIU) for the New York area.

The franchisee will also be required under the franchise agreement to provide an amortization option to said operators. The amortization agreement shall be for a duration of no less than five years and the interest rate on the amortization agreement will be the prime rate plus one percent (1%).

2. Section III, B. 1: Delivery (p. 22)

Delete Sec. III, B. 1.2 and B. 1.3 and replace with the Sec. III, B. 1.2R and 1.3R (new language is underlined)

B. 1. 2R Scheduling Appointments

Scale models will be delivered by appointment. Proposers will have a one week window to schedule appointments. To schedule delivery appointments proposers should contact Paul Stanton by telephone (212-442-7749) or e-mail (pstanton@dot.nyc.gov) between Monday, August 30, and Thursday, September 2, 2004, between 10:00AM and 5:00PM.

B. 1. 3R Delivery

Deliveries will be scheduled between Monday, September 20, and Friday, September 24, 2004. Deliveries will be made to NYCDOT, 59 Maiden Lane, New York, NY (between Nassau and William Streets). A representative from NYCDOT will meet delivery crews at the scheduled time in the lobby of 59 Maiden Lane. Delivery crews should have proper identification. Delivery crews will be escorted to the 34th Floor by the NYCDOT representative to unload their parcels in a secure location. Deliveries may be required to be made at the buildings loading dock. In that event the location at 59 Maiden Lane for meeting the NYCDOT representative will be finalized at the time the appointment is made.

The Department strongly recommends delivery services allot enough time to arrive prior to your scheduled appointment. The Department cannot guarantee another delivery appointment if the originally scheduled appointment is missed.

3. Appendix 13: Newsrack Criteria (p.68)

Delete Appendix 13 and replace with new Appendix 13R (attached)

**FIRST AMENDMENT TO AMENDED
AND RESTATED FRANCHISE AGREEMENT**

THIS **FIRST AMENDMENT TO AMENDED AND RESTATED FRANCHISE AGREEMENT** (this “Amendment”) by and between **THE CITY OF NEW YORK** (the “City”) acting by and through its **DEPARTMENT OF TRANSPORTATION** (“DOT”), having an address at 55 Water Street, New York, New York 10041, and **JCDECAUX STREET FURNITURE NEW YORK, LLC f/k/a Cemusa NY, LLC**, having a place of business at 350 Fifth Avenue, 73rd Floor, New York, New York 10118 (the “Company”), is executed as of the __ day of _____, 2023.

WITNESSETH:

WHEREAS, on June 26, 2006, Cemusa Inc. and the City acting by and through DOT entered into a Franchise Agreement for the Coordinated Street Furniture Franchise for the installation, operation and maintenance of Bus Shelters, APTs, and PSSs and for the installation and maintenance of Newsstands (the “2006 Agreement”); and

WHEREAS, on September 20, 2007, Cemusa, Inc. assigned its interest in the 2006 Agreement to Cemusa NY, LLC, a wholly-owned subsidiary thereof; and

WHEREAS, at a meeting held on September 30, 2015, the New York City Franchise and Concession Review Committee (together with any successor thereto, “FCRC”), acting in accordance with its customary procedures, voted on and approved a change in control of Cemusa NY, LLC, pursuant to which all shares of Cemusa, Inc. were transferred from CEMUSA-Corporación Europea de Mobiliario Urbano, S.A. to JCDecaux North America, Inc., together with certain other amendments, clarifications and provisions updating the 2006 Agreement as fully set forth in the 2015 Agreement as defined below; and

WHEREAS, on October 1, 2015, the Company and the City, acting by and through DOT, entered into an Amended and Restated Agreement for the Coordinated Street Furniture Franchise (the “2015 Agreement”, and together with this Amendment, the “Agreement”); and

WHEREAS, on or about December 10, 2015, Cemusa NY, LLC changed its company name to JCDecaux Street Furniture New York, LLC; and

WHEREAS, on or about December 10, 2015, Cemusa, Inc. changed its company name to JCDecaux Street Furniture, Inc.; and

WHEREAS, the parties wish to amend the 2015 Agreement to extend the term of the 2015 Agreement and to incorporate additional rights and responsibilities, including, without limitation, an increase in the overall number of Bus Shelters and APTs that the Company may install, maintain and operate (the “2023 Increase in Bus Shelters and APTs”), and the modification of certain revenue requirements applicable to the Company; and

WHEREAS, DOT considered the potential environmental impact resulting from the 2023 Increase in Bus Shelters and APTs and determined that it is a Type II action and not subject to further environmental review; and

WHEREAS, the New York City Council referred an Authorizing Resolution to The Subcommittee on Zoning and Franchises which held a public hearing on May 2, 2023, to consider the authorization of the extension of the term of the 2015 Agreement; and

WHEREAS, on May 11, 2023, the New York City Council, acting in accordance with its customary procedures, voted on and approved Resolution No. 625 (attached as Exhibit M hereto), authorizing the extension of the term of the 2015 Agreement by five years; and

WHEREAS, on _____, 2023, the FCRC held a public hearing to consider the proposed amendments to the 2015 Agreement; and

WHEREAS, at a meeting held on _____, 2023, the FCRC, acting in accordance with its customary procedures, voted on and approved the proposed amendments to the 2015 Agreement, all as fully set forth in this Amendment.

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

1. Unless otherwise noted in this Amendment, all capitalized terms in this Amendment shall have the meanings ascribed to them in the 2015 Agreement and all provisions shall remain in full force and effect unless otherwise modified herein.

2. All references to Cemusa NY, LLC and Cemusa, Inc. in the 2015 Agreement shall be deemed to mean JCDecaux Street Furniture New York, LLC and JCDecaux Street Furniture, Inc., respectively (other than with respect to Sections 1.9 and 1.59).

3. Section 1.46 of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“1.46 “New Bus Shelter(s)” means bus shelters installed or to be installed by the Company in conformity with the Plans and Specifications, which replace Existing Bus Shelters or are placed, at DOT’s request as contemplated in this Agreement, at other locations, and shall also include Reciprocal Bus Shelters, Fifth Avenue Bus Shelters, Schedule Y Bus Shelters, DOT-Designated Bus Shelters, and the Bus Shelters contemplated in Section 9.17.”

4. Section 1 of the 2015 Agreement is hereby revised to add a new Section 1.78 titled “Additional New Defined Terms” as follows:

(a) “Bus Shelter Fee Adjustment” shall have the meaning given in Section 2.5.3.3(a) hereof.

- (b) “DOT-Designated Bus Shelters” shall have the meaning given in Section 2.5.3.3(d) hereof.
- (c) “Delayed Sites” shall have the meaning given in Section 2.5.3.3(a) hereof and Schedule Y hereto.
- (d) “Existing APTs” means the six (6) existing APTs installed under this Agreement as of the Effective Date of the First Amendment, which APTs are located (i) outside Madison Square Park, (ii) at Corona Plaza, (iii) outside Prospect Park on Flatbush Avenue, (iv) at Plaza de las Americas, (v) at Fordham Plaza, and (vi) in Williamsburg near the Metropolitan Transportation Authority bus depot.
- (e) “Effective Date of the First Amendment” is day 1 of contract year 18 (which is June 26, 2023).
- (f) “First Amendment” means this First Amendment to Amended and Restated Franchise Agreement, dated as of June ____, 2023.
- (g) “New APT(s)” means the APT model offered by the Company known, as of the Effective Date of the First Amendment, as a “JCDecaux Infinity APT”.
- (h) “Non-Traditional Advertising” shall have the meaning given in Section 4.4.2 hereof.”
- (i) “Phase Two APT(s)” means collectively, the up to twenty (20) New APTs installed pursuant to Section 2.4.6(b)(iii) of this Agreement.
- (j) “Post-Year 20 Permit” shall have the meaning given in Section 2.5.3.3(b) hereof.
- (k) “Replacement Bus Shelter Standard” shall have the meaning given in Section 2.5.3.3(a) hereof.
- (l) “Required Approvals” shall have the meaning given in Section 2.4.4(a) hereof.
- (m) “Schedule Y Bus Shelters” shall have the meaning given in Section 2.5.3.3(a) hereof.

5. Section 2.1 of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“2.1 Term. This Agreement, and the franchise granted hereunder, shall commence upon the Effective Date, and shall continue for a term of twenty-five (25) years from the Effective Date, unless this Agreement is earlier terminated as provided in this Agreement (the “Term”).”

6. Section 2.4.4(a) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“(a) Before installing any Coordinated Franchise Structure, the Company shall obtain, at its sole cost and expense, any necessary permits, authorizations, approvals, consents, licenses, and certifications required for each Coordinated Franchise Structure (“Required Approvals”), including, but not limited to: (i) pursuant to all City laws, rules and codes related to materials and construction and all applicable sections of the building, plumbing and electrical codes of the City; (ii) all permits, authorizations, approvals, consents, licenses and certifications required by DOT, Landmarks, the Public Design Commission, and any other agency of the City with jurisdiction over the property on which the applicable Coordinated Franchise Structure is to be located; (iii) any necessary permits, authorizations, approvals, consents, licenses, and certifications required pursuant to any applicable state and federal laws, rules, regulations and policies, writs, decrees, and judgments; and (iv) any necessary permits, authorizations, approvals, consents, licenses, and certifications from Persons to use a building or other private property, easements, poles, and conduits.”

7. Section 2.4.6(a)(i) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“(i) The Company shall construct and install in locations as set forth in Schedule A attached hereto, and in such other locations as may be directed by DOT, at least 3,300 New Bus Shelters by the fifth anniversary of the Build Start Date, with at least 650 New Bus Shelters in total having been installed by the first anniversary of the Build Start Date, at least 1,350 New Bus Shelters in total having been installed by the second anniversary of the Build Start Date, at least 2,000 New Bus Shelters in total having been installed by the third anniversary of the Build Start Date, at least 2,650 New Bus Shelters in total having been installed by the fourth anniversary of the Build Start Date and at least 3,300 New Bus Shelters having been installed by the fifth anniversary of the Build Start Date. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT.

The replacement of Existing Bus Shelters at the locations set forth in Schedule A shall take place in accordance with a schedule to be proposed by the Company and approved by DOT (the “Existing Bus Shelter Replacement Schedule”), which shall be consistent with the overall construction and installation schedule contemplated by this Agreement and shall provide that, each year, 20% of replacements take place at locations allocated to NYCMDC as set forth in Exhibit H attached hereto. The Existing Bus Shelter Replacement Schedule shall include, at a minimum, for each month of the build-out years, the location of each Existing Bus Shelter scheduled to be replaced, the projected date for submission of a site plan and photographs, and the projected date for installation.

Upon notification from DOT that a site plan and photographs are required for a location other than as specified in the Existing Bus Shelter Replacement Schedule, including, but not limited to, the locations for additional New Bus Shelters as set forth in Section 2.5.3.3 below, but excluding any locations for Schedule Y Bus Shelters, the Company shall have thirty (30) days to deliver the site plan and photographs to DOT. DOT shall notify the

Company when the site plan is approved, or whether changes are required. The Company, upon the receipt of an approved site plan from DOT, shall have thirty (30) days to install the New Bus Shelter. With respect to additional New Bus Shelters, which are DOT-Designated Bus Shelters or Schedule Y Bus Shelters, the Company shall commence installations no later than January 1st, 2024, (subject to any City holiday construction embargoes) and shall diligently install DOT-Designated Bus Shelters at the rate of not less than thirty-five (35) per month, unless a lesser number shall be directed by DOT, and subject to any weather and site conditions outside the control of the Company. The Company may request an extension of time to install the New Bus Shelters, which may be granted by DOT in writing in its reasonable discretion; provided, however, that if changes are required by DOT, an extension shall be granted for a reasonable period of time commensurate with the nature of the required changes.

In addition, and subject to the terms of this Agreement, the Company shall construct, install and maintain the additional New Bus Shelters as set forth in Section 2.5.3.3 below; provided, however, that the total number of Bus Shelters in service at any point in time shall not exceed 3,850 except by mutual agreement of the City and the Company.”

8. Section 2.4.6(b) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“(b) The Company shall remove Existing APTs and shall install New APTs in accordance with the following:

- (i) The Company shall, at DOT’s direction, remove and dispose of the Existing APTs, and shall construct, install, and maintain six (6) New APTs in the same locations, in accordance with the time frames set forth in Appendix G attached hereto and the financial provisions set forth under Section II in Schedule Z attached hereto; provided, however, that the Company’s obligations set forth in this sentence shall be tolled during (x) such time that the Company redesigns and retools the New APTs to adapt them for installation in the City, which subject to the immediately succeeding clause (y) redesigning and retooling, shall begin within fifteen (15) days of the Effective Date of the First Amendment and shall take no longer than twelve (12) months and (y) any time that access to the subject site is blocked due to circumstances beyond the Company’s control. The Company shall be responsible for the cost of removal and disposition of any Existing APTs;
- (ii) The Company shall also, at DOT’s direction, construct, install, and maintain fourteen (14) additional New APTs in locations as directed by the City, in accordance with the time frames set forth in Appendix G and the financial provisions set forth under Section II of Schedule Z, provided, however, that the Company’s obligations set forth in this sentence shall be tolled during (x) such time that the Company redesigns and retools the New APTs to adapt them for installation in the City, which, subject to the immediately succeeding clause (y), redesigning and retooling, shall begin within fifteen

(15) days of the Effective Date of the First Amendment and shall take no longer than twelve (12) months and (y) any time that access to the subject site is blocked due to circumstances beyond the Company's control; and

- (iii) After the construction and installation of the fourteen (14) New APTs as set forth in Section 2.4.6(b)(ii) above, the Company shall then, at DOT's direction, construct, install and maintain up to twenty (20) additional New APTs in locations as directed by the City in accordance with the time frames set forth in Appendix G and the financial provisions set forth under Section II of Schedule Z, provided, however, that the Company's obligations set forth in this sentence shall be tolled during any time that access to the site selected by the City is blocked due to circumstances beyond the Company's control.
- (iv) After installing any New APT, the Company shall operate and maintain such New APTs at the Company's sole cost and expense and in accordance with the terms and conditions of this Agreement."

9. Section 2.4.6(d)(iii) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

"(iii) The Company shall construct and install in locations as set forth in Schedule B attached hereto, and in such other locations as may be directed by the City, at least 330 Newsstands, which may include Replacement Newsstands and/or New Newsstands with at least 110 Newsstands, as selected by the City in its sole discretion, being installed by the first anniversary of the Build Start Date, with at least 220 Newsstands, as selected by the City in its sole discretion, being installed by the second anniversary of the Build Start Date, and at least 330 Newsstands being installed by the third anniversary of the Build Start Date. The Company's obligations set forth in the preceding sentence shall, to the extent that the above time schedule cannot be met because access to any site is blocked due to circumstances outside the Company's control, be tolled during such time access is blocked. The Company may, but shall not be required to, exceed the foregoing minimum number of installations during the time periods referred to in the preceding sentence with the consent of DOT. Additionally, the Company shall construct and install at the option of the City in its sole discretion additional New Newsstands necessary for operation under any new license issued throughout the Term by the Department of Consumer and Worker Protection (formerly known as the Department of Consumer Affairs) or any successor thereto. All Newsstands constructed shall include, at the Company's sole cost and expense, necessary electric and telephone hook-ups and infrastructure required by the appropriate utility to establish a separate account for the Newsstand Operator's usage of electricity in the Newsstand. However, the New Newsstand Operators will be required to reimburse the Company for the costs and expenses of the construction and installation including costs associated with any interior electric and/or telephone hookups to the Newsstand, in accordance with Appendix B attached hereto; provided, however, that the City shall not be responsible for reimbursement to the Company for the New Newsstands in the event that the Company does not receive such compensation from the New Newsstand Operators and

further provided that the Company shall not be required to lend any Newsstand Operator any amounts associated with the construction, installation or relocation of a Newsstand, including, but not limited to, the New Newsstand Costs described in Appendix B. Upon payment of the amount required, the Company shall provide the New Newsstand Operator(s) with proof of payment.”

10. The 2015 Agreement is hereby revised to add a new Section 2.5.3.3 as follows:

“2.5.3.3. Additional New Bus Shelters. The Company shall construct, install, and maintain additional New Bus Shelters as follows:

- (a) Subject to subsection (b) below, the Company shall construct, install, and maintain, at the Company’s sole cost and expense and in accordance with the terms and conditions of this Agreement, up to sixty (60) New Bus Shelters at locations designated in the attached Schedule Y (the “Schedule Y Bus Shelters”). The Company shall submit site plans for the location of each Schedule Y Bus Shelter to DOT as soon as is reasonably practicable, and DOT shall provide the Company with approval of such site plans within forty-five (45) days of the submission and resubmission, if applicable, by the Company of any site plan for such Schedule Y Bus Shelter or such other reasonable time frame as may be agreed upon by the Company and DOT. Thereafter the City shall issue all Required Approvals promptly and in no event more than thirty (30) days after submission by the Company.

Subject to subsection (b) below, in the event that (a) the Company has timely applied for all applicable Required Approvals and does not receive all such Required Approvals for the locations of one or more of the sixty (60) Schedule Y Bus Shelters by December 31, 2023 or (b) the Required Approvals for any location or locations on Schedule Y are timely provided to the Company, but later revoked prior to the installation of the applicable Schedule Y Bus Shelter(s), the Company shall use good faith efforts to identify one or more additional and/or alternative location(s) for such Schedule Y Bus Shelter(s) that the Company reasonably determines would in the aggregate generate approximately equal gross revenue (the “Replacement Bus Shelter Standard”). The installation of such replacement Bus Shelters in such additional and/or alternative location(s) satisfying the Replacement Bus Shelter Standard shall be subject to the approval of the City. If, after good faith discussions between the Company and DOT, which shall take place within thirty (30) days of the Company’s request unless such time period is extended by mutual agreement of the Company and DOT, the City does not approve the installation of the proposed replacement Bus Shelter(s) satisfying the Replacement Bus Shelter Standard or the Company, after good faith efforts, cannot identify additional or alternative locations satisfying the Replacement Bus Shelter Standard, and the total number of Schedule Y Bus Shelters falls below sixty (60) including approved replacement Bus Shelters, the Cash Component of the Franchise Fee shall be adjusted as set forth in Schedule D (“Bus Shelter Fee Adjustment”) for each such unavailable Schedule Y Bus Shelter below sixty (60).

Further, no Bus Shelter Fee Adjustment shall be available for a Schedule Y location that is found to be infeasible (x) due to physical conditions as of the Effective Date of the First Amendment that would prevent installation of a Bus Shelter at the site (e.g., underground vaults) or (y) due to construction (including scaffolding or other physical impediments) that prevents the installation of a New Bus Shelter at such Schedule Y Bus Shelter location; provided further that the Company may elect to reject such previously approved location and request an alternate site in accordance with the Replacement Bus Shelter Standard and the timeline set forth above. Notwithstanding the foregoing, as to those Schedule Y Bus Shelter sites where there exists construction work (including scaffolding or other physical impediments) as of the Effective Date of the First Amendment, as designated in the attached Schedule Y (collectively, the “Delayed Sites”), the Company may, but shall not be obligated to submit, and DOT shall not be obligated to approve until the Company submits a site plan, until after such construction work is completed and impediments removed, and such Delayed Sites shall not be eligible for a Bus Shelter Fee Adjustment until the subject impediment has been eliminated; provided, further that such Delayed Sites shall be subtracted from the Schedule Y total until such impediments have been removed, such that the number sixty (60) set forth in this paragraph shall be reduced by the number of Delayed Sites. Notwithstanding anything to the contrary, the Company may request alternate locations for any or all such Delayed Sites and such request(s) will be processed by DOT as prescribed for Schedule Y locations. If such alternate locations result in the installation of a Bus Shelter then such location shall be substituted on Schedule Y as if it had been initially included.

- (b) After the construction and installation of the Schedule Y Bus Shelters, the Company may request to construct, install, and maintain, at the Company’s sole cost and expense, additional Schedule Y Bus Shelters, which the DOT may authorize if the Company has provided reasonable evidence that such proposed Schedule Y Bus Shelter would be high-revenue, would serve transit riders and is technically feasible. Notwithstanding anything to the contrary, with respect to installation permits that the City agrees to issue after the end of contract year 20 (“Post-Year 20 Permit”), the Company may decline to install a Schedule Y Bus Shelter at such location, in which case the annual deduction shall become unavailable for such location.
- (c) The Company shall construct, install, and maintain, at the Company’s sole cost and expense and in accordance with the terms and conditions of this Agreement, at least five (5) and up to twenty-one (21) New Bus Shelters, in such locations as may be directed by DOT, subject to reconciliation between the Company and DOT of the number of New Bus Shelters remaining to be installed under the 2015 Agreement.
- (d) Additionally, the Company shall, at DOT’s direction, construct, install, and maintain three hundred and one (301) New Bus Shelters at locations designated by DOT (“DOT-Designated Bus Shelters”). The Company shall install a minimum of thirty-five (35) DOT-Designated Shelters per month starting on January 1, 2024, unless a lesser number shall be directed by DOT or otherwise agreed by DOT and the Company, and subject to any weather and site conditions outside the control of the Company. Upon

the installation of a DOT-Designated Bus Shelter, the Cash Component of the Franchise Fee for the then-current year of this Agreement shall be adjusted in accordance with the financial provisions set forth under Section I(A) Cash Component Deductions for DOT-Designated Bus Shelters (Single) or Section I(B) Cash Component Deductions for DOT-Designated Bus Shelters (Double) of Schedule Z annexed hereto, as applicable. After installing the DOT-Designated Bus Shelters, the Company shall operate and maintain said DOT-Designated Bus Shelters at the Company's sole cost and expense and in accordance with the terms and conditions of this Agreement.”

11. Section 2.5.4.1 of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“2.5.4.1. Public Utilities, Other. The Company shall remove, replace, relocate, or reinstall, at its sole cost and expense (excluding Phase Two APTs, the payment for which shall be the responsibility of the City unless such removal or replacement is due to defects that cannot be repaired and are the responsibility of the Company under this Agreement), subject to Section 2.5.4.5 hereof, at the request of the City, any Coordinated Franchise Structure, which interferes with the construction, maintenance or repairs of public utilities, public works or public improvements. The Company shall not be responsible for the costs and expenses of any removal, replacement, relocation and/or reinstallation requested by the City except as set forth in the preceding sentence or as expressly required elsewhere in this Agreement, including, but not limited to, Section 2.5.4.2 hereof. Nothing in this Agreement shall abrogate the right of the City to change the grades or lines of any Inalienable Property of the City, or perform any public works or public improvements, or any street widening project, or any other capital project of any description. In the event that the Company refuses or neglects to so remove, replace, relocate or reinstall such Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City including, but not limited to repair and restoration costs, arising out of the performance of such work.”

12. Section 2.5.4.2 of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“2.5.4.2. Public Use, Other. The City shall have the right at any time to inspect any Coordinated Franchise Structures and order the removal, replacement, relocation or reinstallation of any of the Coordinated Franchise Structures, at the sole cost and expense of the Company (excluding Phase Two APTs, the payment for which shall be the responsibility of the City unless such removal or replacement is due to defects that cannot be repaired and are the responsibility of the Company under this Agreement), subject to Section 2.5.4.5 hereof, upon a determination in the City's sole discretion that any of the Coordinated Franchise Structures, unreasonably interferes or will unreasonably interfere with the use of a street by the public, constitutes a public nuisance, creates a security

concern, or is, or has otherwise become, inappropriate at a particular location, or that such removal, replacement, relocation, or reinstallation is necessary to address changing conditions. In the event that the Company fails to so remove, replace, relocate, or reinstall any of the Coordinated Franchise Structures as directed by the City, the City shall have the right to remove, replace, relocate, or reinstall such Coordinated Franchise Structures without any liability to the Company, and the Company shall pay to the City the costs incurred in connection with such removal, replacement, relocation or reinstallation and for any other costs or damages incurred by the City, including but not limited to, repair and restoration costs, subject to Section 2.5.4.5 hereof. If a Coordinated Franchise Structure is required to be removed and/or relocated because the City mistakenly identified a location listed on Schedule A or Schedule B as Inalienable Property of the City, the City shall require the Company to remove and/or relocate such Coordinated Franchise Structure and shall pay to the Company the costs incurred in connection with such removal and/or relocation and for any other costs or damages incurred by the Company, including but not limited to repair, and restoration costs.”

13. The 2015 Agreement is hereby revised to add a new Section 2.5.4.5 as follows:

“2.5.4.5. Limitation on Relocations and Reinstallations of Bus Shelters.

(a) The Company shall perform all removals, replacements, relocations, and reinstallations of Bus Shelters, as set forth in Section 2.5.4; provided, however, other than with respect to emergency relocations or reinstallations required pursuant to Section 2.5.4.4, the City shall limit to fifty (50) the annual number of relocations or reinstallations of Bus Shelters per contract year. Above fifty (50), should the City determine in good faith that application of such limit is impracticable in any year, the Company shall remain obligated to perform all relocations and reinstallations of Bus Shelters above such limit as directed by the City and shall provide, at the City’s request, an estimate of the costs for any such relocations and reinstallations, for which the City shall be responsible. With respect to any removal, replacement, relocation, or reinstallation of a Bus Shelter, the DOT shall make reasonable efforts to coordinate the removal, replacement, relocation or reinstallation of the Bus Shelter and the affected sidewalk work with the Company in order to mitigate the costs related to such removal, replacement, relocation, or reinstallation of a Bus Shelter.

(b) If the City shall require the removal or relocation of any Fifth Avenue Bus Shelter, the Company and DOT shall use good faith efforts to identify one or more additional and/or alternative location(s) on Fifth Avenue between 42nd Street and 59th Street. The installation of such replacement Bus Shelters in such additional and/or alternative locations shall be subject to the approval of the City. If the City does not approve the installation of the proposed replacement Bus Shelter(s) in such additional and/or alternative locations and requires removal of a Fifth Avenue Bus Shelter, the Cash Component of the Franchise Fee shall be adjusted under the Bus Shelter Fee Adjustment formula for Fifth Avenue Bus Shelters set forth in Schedule D.

14. Section 3.1.1(a) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“(a) All maintenance of the Bus Shelters, including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse from the Bus Shelters, must occur on at least two nonconsecutive days each week in accordance with a plan to be reasonably approved by the DOT annually; promptly clearing and removing excessive roof debris (e.g., leaves), snow and ice from the ground in and around the Bus Shelters up to three feet on each side of the Bus Shelter and to the Curb on the Curb-side of the Bus Shelter (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover). Notwithstanding anything to the contrary, the Company shall commence snow removal in accordance with a snow removal protocol to be reasonably agreed upon by DOT and the Company; provided, however, that snow removal shall commence within four (4) hours after the snow ceases to fall as provided in section 16-123 of the New York City Administrative Code, and the Company shall diligently and continuously complete removal of snow from all Bus Shelters, and provided further, that in the absence of an agreed-upon snow removal protocol as set forth herein, the Company shall comply with the regulations for snow removal set forth in section 16-123(a) of the New York City Administrative Code in effect as of the date of Effective Date of the First Amendment.

15. Section 3.1.2(a) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“(a) All maintenance of the APTs, including, but not limited to, preventative maintenance, cleaning, removing graffiti, dirt, stickers, and refuse, and restocking dispensers on a daily basis in accordance with a plan to be reasonably approved by the DOT annually, promptly clearing and removing excessive roof debris (e.g., leaves), snow and ice from the ground in and around the APTs up to three feet on each side of the APT and to the Curb on the Curb-side of the APT (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover), prompt response to self-activating maintenance and operating warning systems, and ensuring comfortable interior temperature, ventilation and illumination between the hours of eight a.m. and eight p.m. daily unless longer hours are otherwise directed by DOT in its reasonable discretion. Notwithstanding anything to the contrary, the Company shall commence snow removal in accordance with a snow removal protocol to be reasonably agreed upon by DOT and the Company; provided, however, that snow removal shall commence within four (4) hours after the snow ceases to fall as provided in section 16-123 of the New York City Administrative Code, and the Company shall diligently and continuously complete removal of snow from all APTs, and provided further, that in the absence of an agreed-upon snow removal protocol as set forth herein, the Company shall comply with the regulations for snow removal set forth in section 16-123(a) of the New York City Administrative Code in effect as of the date of the Effective Date of the First Amendment.

16. Section 3.1.4(a) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“(a) the Company shall be responsible for all maintenance of the exterior of the Replacement and New Newsstands, in cooperation with the Newsstand Operators including, but not limited to, preventative maintenance, cleaning and removing graffiti, dirt, stickers and refuse on the exterior of the Newsstand on at least two nonconsecutive days each week in accordance with a plan to be reasonably approved by the DOT annually, promptly clearing and removing excess excessive roof debris (e.g., leaves), snow and ice from the ground in and around the Newsstands up to three feet on each side of the Newsstand and to the Curb on the Curb-side of the Newsstand (including clearing a three-foot access path for wheelchairs in the case of snow and ice and spreading salt or ice remover) and daily inspections of the Newsstands for damage, debris, and unsafe conditions. Notwithstanding anything to the contrary, the Company shall commence snow removal in accordance with a snow removal protocol to be reasonably agreed upon by DOT and the Company; provided, however, that snow removal shall commence within four (4) hours after the snow ceases to fall as provided in section 16-123 of the New York City Administrative Code, and the Company shall diligently and continuously complete removal of snow from all Newsstands, and provided further, that in the absence of an agreed-upon snow removal protocol as set forth herein, the Company shall comply with the regulations for snow removal set forth in section 16-123(a) of the New York City Administrative Code in effect as of the date of the Effective Date of the First Amendment. The Company shall also be responsible for inspections of electrical wiring and connections including service and post connections and testing for stray voltage (such inspections and testing may be part of regularly scheduled general inspections or otherwise) at least once each year during the Term. The Company shall record in EIMIS the date(s) of such inspections and testing; provided, however,”

17. Section 4.4.2 of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“4.4.2. Other Media. At the Company’s request, DOT may permit, in the DOT’s discretion not to be unreasonably withheld, temporary advertising wrapping of the Coordinated Franchise Structures and/or temporary innovative build-outs (“Non-Traditional Advertising”) of up to ten (10) Coordinated Franchise Structure locations per month for a limited time period, and the dimension specifications set forth in Appendix D shall not apply to such Non-Traditional Advertising. Electronic media will be permitted on a case-by-case basis and, except for backlighting of printed posters (the Company shall be permitted to use backlighting of advertising on Coordinated Franchise Structures except where prohibited by rules or regulations of Landmarks), will be guided by (except as may otherwise be permitted by the City) the applicable zoning regulations for property adjacent to the site, and shall be subject to all applicable approvals by City agencies. Audio advertising will not be permitted, provided, however, an audio component used in connection with an information/computer kiosk may be permitted in the sole discretion of DOT.”

18. The 2015 Agreement is hereby revised to add a new Section 8.5 as follows:

“8.5 Obligation to Use MWBE Contractors and Subcontractors. The Company certifies that, after the Effective Date of the First Amendment, to the extent the Company utilizes contractors and subcontractors for the labor and materials involved in performance of its obligations under this Agreement, it shall utilize minority-owned business enterprises and women-owned business enterprises certified in accordance with Section 1304 of the Charter (“MWBEs”) in order to meet an MWBE participation goal of thirty percent (30%); provided that, if after diligent efforts, as reasonably satisfactory to DOT, the Company cannot identify a certified MWBE to fulfill certain product requirements (for example, specialized custom-fabricated digital equipment), such work shall not be considered in calculating the foregoing percentage of MWBE participation.”

19. Section 9.2 of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“9.2 Compensation.

9.2.1. Effective Date Through Year 18 of the Term. As compensation for the franchise, commencing on the Effective Date and through the 18th year of the Term, and as set forth in this Section 9, the Company shall pay and/or provide (as the case may be) to the City with respect to each year of the Term (subject to the remaining provisions of this Section 9 and any reductions required pursuant to Schedule Z and Schedule D):

the greater of:

- (i) 50% of Gross Revenues for such year of the Term; or
- (ii) the Cash Component for such year of the Term;

plus

the Alternative Compensation for such year of the Term as the Franchise Fee; provided however that, in any year of the Term in which 50% of Gross Revenues is greater than the Cash Component, the Cash Component will be increased and the Alternative Compensation will be reduced by the actual amount of the positive difference obtained by subtracting the amount of the Cash Component (as set forth in Schedule C for such year, i.e., prior to any adjustment) from 50% of Gross Revenues for such year; provided further however that the Alternative Compensation shall not be reduced by, nor the Cash Component increased by, an amount which would reduce Alternative Compensation below the amount set forth in Column C of Schedule C for such year. The adjustments to the Alternative Compensation contemplated in this Section 9.2.1 shall be made in the year of the Term following the year of the Term to which they apply, due to the inability to adjust Alternative Compensation retroactively.

For the avoidance of doubt, several examples of the calculation of the Franchise Fee in a variety of circumstances are set forth on Schedule 9.2 to this Agreement.

9.2.2. Years 19 and 20 of the Term. As compensation for the franchise for years 19 and 20 of the Term, the Company shall pay and provide (as the case may be) to the City with respect to years 19 and 20 of the Term (subject to the remaining provisions of this Section 9 and any reductions required pursuant to Schedule Z and Schedule D), the Cash Component as set forth in Column A of Schedule C for such year plus the Alternative Compensation for such year of the Term. In addition, the City shall receive 50% of Gross Revenues in excess of \$105 million for each such year of the Term.

9.2.3. Years 21 through 25 of the Term. As compensation for the franchise for years 21 through 25 of the Term, the Company shall pay and provide (as the case may be) to the City with respect to years 21 through 25 of the Term (subject to the remaining provisions of this Section 9 and any reductions required pursuant to Schedule Z and Schedule D), the Cash Component as set forth in Column A of Schedule C for such year plus the Alternative Compensation for such year of the Term. In addition, the City shall receive 50% of Gross Revenues in excess of \$110 million for each such year of the Term.”

20. Section 9.5(a) of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“(a) Beginning with the fifth year of the Term and through the eighteenth year of the Term (it being understood and agreed that the Cash Component of the Franchise Fee payable with respect to the first four years of the Term shall be paid in accordance with Section 9.3 herein), within thirty (30) days after the end of each of the first three quarters of each year of the Term, the Company shall pay to the City the greater of (i) one fourth of the Cash Component for such year or (ii) 50% of Gross Revenues for that quarter. Beginning with the nineteenth year of the Term and through the twentieth year of the Term, (i) within thirty (30) days after the end of each of the first three quarters of each year of the Term, the Company shall pay to the City one fourth of the Cash Component for such year and (ii) within thirty (30) days after the end of the fourth quarter of each year of the Term, the Company shall pay to the City (x) one fourth of the Cash Component for such year plus (y) 50% of Gross Revenues for such year in excess of \$105 million. Beginning with the twenty-first year of the Term and through the twenty-fifth year of the Term, (i) within thirty (30) days after the end of each of the first three quarters of each year of the Term, the Company shall pay to the City one fourth of the Cash Component for such year and (ii) within thirty (30) days after the end of the fourth quarter of each year of the Term, the Company shall pay to the City (x) one fourth of the Cash Component for such year plus (y) 50% of Gross Revenues for such year in excess of \$110 million. In addition, beginning with the fifth year of the Term, within thirty (30) days after the end of the fourth quarter of each year of the Term, the Company shall pay the excess, if any, of the full cash payment due to the City under Section 9.2 for such year of the Term (after all applicable adjustments contemplated by Section 9 and Section 4.7 and Schedules D and Z) over the amounts already paid by the Company on a quarterly basis with respect to such year under the preceding sentence. If the sum of the payments made by the Company in accordance with

this Section 9.5(a) with respect to any year of the Term exceeds the Cash Component of the Franchise Fee due to the City under Section 9.2 for such year (after all applicable adjustments contemplated by Section 9 and Section 4.7 and Schedules D and Z), the Company shall be entitled to take the excess as a credit against the next cash payment or payments due to the City under this Section 9, unless there is no such next payment scheduled (i.e., the Term has expired or terminated), in which case such excess shall be payable by the City to the Company within thirty (30) days (if the amount is less than \$100,000) or ninety (90) days (if the amount is equal to or greater than \$100,000) of invoice therefor.”

21. Section 14.5 of the 2015 Agreement is hereby stricken in its entirety and replaced with the following:

“All notices required to be given to the City or the Company pursuant to Sections 1.27, 6.6, 7.1, 7.2(c), 7.7, 9.4.1, 9.4.1(d), 10.6.2, 11.3, 12.1.5, 13.2.1(b), 13.2.1(c), 13.2.1(d), 13.3(a), 13.4.1, 13.4.2, 14.10, and 14.11 shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by overnight mail, by fax, or by personal delivery to the address or facsimile number listed below, or to such other location or person as any party may designate in writing from time to time. Every communication from the Company shall be sent to the individual, agency or department designated in the applicable section of this Agreement, unless it is to “the City,” in which case such communication shall be sent to:

If to the City:

The Commissioner of DOT at 55 Water Street, New York, New York 10041;

with a copy to

General Counsel, New York City Department of Transportation, 55 Water Street,
New York, New York 10041

If to the Company:

JCDcaux North America Empire State Building 350 Fifth Avenue, 73rd Floor
New York, NY 10118 or fax # 646-834-1208, Attention: General Counsel and Co-CEO

with a copy to

Greenberg Traurig, LLP, One Vanderbilt, New York, New York, 10017, or fax #
212-805-9299, Attention: Edward C. Wallace

Except as otherwise provided herein, the mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when mailed or when received if transmitted by facsimile. Any notice required to be given to the Company pursuant to Section 13 herein for which a cure period is ten days or less, which requires action to be taken within ten days or less, or notifies the Company of an event or action that will occur in 10 days or less must be given by personal delivery, overnight mail service or facsimile transmission.”

22. Appendix A “Schedule of Liquidated Damages” of the 2015 Agreement is deleted and replaced with a new Appendix A annexed hereto.

23. Appendix B “New Newsstand Costs” of the 2015 Agreement is deleted and replaced with a new Appendix B annexed hereto.

24. Appendix G “Installation, Replacement and Removal of Franchise Structures: Timetables” of the 2015 Agreement is deleted and replaced with a new Appendix G annexed hereto.

25. A new Exhibit M “The City Council of the City of New York Resolution No. 625” annexed hereto, is hereby added to the Agreement.

26. Schedule C “Guaranteed Minimum; Alternative Compensation” of the 2015 Agreement is deleted and replaced with a new Schedule C annexed hereto.

27. Schedule D “Franchise Fee Revisions” of the 2015 Agreement is deleted and replaced with a new Schedule D annexed hereto.

28. A new Schedule Y “Schedule Y Bus Shelters” annexed hereto, is hereby added to the Agreement.

29. A new Schedule Z “Company Cost Breakdown for Deduction Amounts for DOT-Designated Bus Shelters, Additional APTs and Special Installation Costs” annexed hereto, is hereby added to the Agreement.

30. Authorization; Non-Contravention. The Company represents and warrants to the City and covenants and agrees that the execution, delivery and performance of this Amendment and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of the Company and the certified copies of authorizations for the execution and delivery of this Amendment provided to the City in connection with this Amendment are true and correct. This Amendment and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly executed and delivered by the Company and constitute (or upon execution and delivery will constitute) the valid and binding obligations of the Company, and are enforceable (or upon execution and delivery will be enforceable) in accordance with their respective terms. The Company has obtained the requisite authority to authorize, execute and deliver this Amendment and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of the Company to authorize the execution and delivery of this Amendment and the consummation of the transactions contemplated hereby. For the avoidance of doubt, the Company represents and warrants to the City and covenants and agrees that all documents and items required pursuant to the Agreement, including without limitation those set forth in Section 2.2 of the Agreement, remain binding and in effect for the Term and any additional period set forth in the Agreement. Neither the execution and delivery of this Amendment by the Company nor the performance of its obligations contemplated hereby will:

(a) conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of the Company or to the Company's knowledge, any agreement among the owners of the Company, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which the Company is a party or by which it (or any of its properties or assets) is subject or bound;

(b) result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of the Company, except permitted encumbrances under Section 11.5 of the 2015 Agreement; or

(c) terminate, breach or cause a default under any provision or term of any contract, arrangement, agreement, license or commitment to which the Company is a party, except for any event specified herein or in (a) or (b) above, which individually or in the aggregate would not have a material adverse effect on the business, properties or financial condition of the Company or the System.

31. Agreement in Full Force and Effect. Except as modified by this Amendment, the 2015 Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the 2015 Agreement, the terms of this Amendment shall govern and prevail in all instances, and upon execution of this Amendment, any reference to the Agreement or the Franchise Agreement shall mean the 2015 Agreement, as amended by this Amendment.

32. Headings. The headings contained in this Amendment are to facilitate reference only, do not form a part of this Amendment, and shall not in any way affect the construction or interpretation hereof.

33. Governing Law. This Amendment shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of New York, irrespective of conflict of laws principles, as applicable to contracts entered into and to be performed entirely within the State.

34. Counterparts. This Amendment may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

35. Third Party Litigation. Notwithstanding anything to the contrary set forth herein, in that event litigation is brought by a third party which delays or defeats the implementation of this Amendment, including, but not limited to, the installation of the Schedule Y Bus Shelters, the extension of the Term or other material elements of this Amendment, the parties shall promptly negotiate in good faith to address the delay or other impact caused by such litigation.

NO FURTHER TEXT – SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the party of the first part, by a Deputy Mayor, duly authorized by the Charter of the City of New York, has caused the corporate name of said City to be hereunto signed and the corporate seal of said City to be hereunto affixed and by its Commissioner of The New York City Department of Transportation, duly authorized, has caused its name to be hereunto signed and the party of the second part, by its officers thereunto duly authorized, has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

THE CITY OF NEW YORK

By: _____
Deputy Mayor

THE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

By: _____
Commissioner

Approved as to form,
Certified as to Legal Authority

Acting Corporation Counsel

JCDECAUX STREET FURNITURE NEW
YORK, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(Seal)
Attest: _____
City Clerk

CITY OF NEW YORK }
 } ss:
STATE OF NEW YORK }

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that _____, Deputy Mayor of the City of New York, party to the above instrument, personally appeared before me in said State on the ____ day of _____, 2023, the said _____ being personally known to me and who executed the foregoing instrument and acknowledged to me that they executed same as their free act and deed in their capacity as Deputy Mayor of the City of New York.

Give under my hand and seal, this __ day of _____, 2023.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK }
 } ss:
STATE OF NEW YORK }

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that _____, Commissioner of the New York City Department of Transportation, party to the above instrument, personally appeared before me in said State on the ____ day of _____, 2023, the said _____ being personally known to me and who executed the foregoing instrument and acknowledged to me that they executed same as their free act and deed in their capacity as Commissioner of the New York City Department of Transportation.

Give under my hand and seal, this __ day of _____, 2023.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK }
 } ss:
STATE OF NEW YORK }

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that _____ of JCDecaux Street Furniture New York, LLC, party to the above instrument, personally appeared before me in said State on the ____ day of _____, 2023, the said _____ being personally known to me and who executed the foregoing instrument and acknowledged to me that they executed same as their free act and deed in their capacity as _____ of JCDECAUX STREET FURNITURE NEW YORK, LLC.

Give under my hand and seal, this __ day of _____, 2023.

Notary Public

My Commission Expires: _____

CITY OF NEW YORK }
 } ss:
STATE OF NEW YORK }

I, _____, a Notary Public in and for the State of New York, residing therein, duly commissioned and sworn, do hereby certify that _____ of JCDecaux Street Furniture New York, LLC, party to the above instrument, personally appeared before me in said State on the ____ day of _____, 2023, the said _____ being personally known to me and who executed the foregoing instrument and acknowledged to me that they executed same as their free act and deed in their capacity as _____ of JCDECAUX STREET FURNITURE NEW YORK, LLC.

Give under my hand and seal, this __ day of _____, 2023.

Notary Public

My Commission Expires: _____

Appendix A: Schedule of Liquidated Damages

Unless specified otherwise in the Amendment, the liquidated damages amounts for Coordinated Franchise Structures shall apply:

Requirement	Standard	Liquidated Damage
Bus Shelters installed by the first anniversary of the Build Start Date.	Minimum 650	\$200 per week, per Bus Shelter not installed and operational
Bus Shelters installed by the second anniversary of the Build Start Date.	Minimum 1,350	\$200 per week, per Bus Shelter not installed and operational
Bus Shelters installed by the third anniversary of the Build Start Date.	Minimum of 2,000	\$200 per week, per Bus Shelter not installed and operational
Bus Shelters installed by the fourth anniversary of the Build Start Date.	Minimum of 2,650	\$200 per week, per Bus Shelter not installed and operational
Bus Shelters installed by the fifth anniversary of the Build Start Date.	Minimum of 3,300	\$200 per week, per Bus Shelter not installed and operational
Site Plan and photographs for a New Bus Shelter not specified on the Existing Bus Shelter Replacement Schedule	Upon request from the Department for a new Bus Shelter, 30 days to produce a site plan and photographs in accordance with section 2.4.6(a)(i)	\$100 per day, per site plan and photographs not produced
Installation of a New Bus Shelter not specified on the Existing Bus Shelter Replacement Schedule	Upon site plan approval, 30 days for installation in accordance with section 2.4.6(a)(i)	\$100 per day, per Bus Shelter not installed and operational
Conduct an engineering assessment and produce a site plan and photographs and provide an estimate of installation costs for APTs per Appendix G	60 days from notification from DOT	\$200 per week per site plan and photographs not produced or estimate of installation costs not provided
Installation of APTs per Appendix G	90 days from all required City approvals	\$200 per week per APT not installed and operational within 90 days.
Newsstands installed by the first anniversary of the Build Start Date.	Minimum of 110	\$200 per week, per Newsstand not installed and operational
Newsstands installed by the second anniversary of the Build Start Date.	Minimum of 220	\$200 per week, per Newsstand not installed and operational
Newsstands installed by the third anniversary of the Build Start Date.	Minimum of 330	\$200 per week, per Newsstand not installed and operational

Note: All installations are subject to the inspection provisions in Section 2.4.6(f)

Requirement	Standard	Liquidated Damage
Removal of and Replacement of an Existing Newsstand	The replacement of an Existing Newsstand should take place on the same day, when possible, but no more than 9 days from removal. Removal of Existing Newsstand shall take place in accordance with the dates specified in the Replacement Newsstand Schedule, or dates mutually agreed to by the Company and DOT.	\$250 per day that Newsstand is not replaced within 9 days after removal and \$250 per day that Existing Newsstand is not removed by the date specified in the Replacement Newsstand Schedule, or date mutually agreed to by the Company and DOT.
Installation of a newly licensed Newsstand	Upon request from the Department for a new newsstand location, the Company has 30 days to produce a site plan and photographs and 30 days to install the newsstand in accordance with 2.4.6(d)(ii) and Appendix G.	\$250 per day per New Newsstand.
Installation of Information/Computer Kiosks	Upon request from the Department for a new Information/Computer Kiosk, 30 days to produce a site plan, photograph(s) and installation.	\$50 per week, per Kiosk.
Installation of a Trash Receptacle	10 days from notification by the Department	\$50 per week, per Receptacle
Installation of a Multi-rack newssrack	Upon request from the Department for a new multi-rack newssrack, the Company has 30 days to produce a site plan, photograph(s) and installation.	\$50 per week, per Multi news-rack

Replacement, Removal, Relocation and Reinstallation of Structures, unless specified otherwise in the Amendment, the following requirements, standards and liquidated damages amounts for Coordinated Franchise Structures shall apply:

Requirement	Standard	Liquidated Damage
Removal of Bus Stop Shelter including sidewalk restoration.	5 business days from notification by the Department	\$100 per day, per Bus Shelter.
Site plan and photographs for replacement, reinstallation or relocation of Bus Shelter	Upon request from the Department for the replacement, reinstallation or relocation of a Bus Shelter, 30 days to produce a site plan and photographs	\$100 per day, per site plan and photographs not produced
Replacement, reinstallation or relocation of Bus Shelter	Upon site plan approval, 30 days for installation at the same or new location.	\$100 per day, per Bus Shelter not installed and operational
Removal of an abandoned or unoccupied Newsstand including sidewalk restoration.	5 business days from notification by the Department	\$100 per day, per Newsstand.
Removal of an APT including sidewalk and utility restoration.	The APT shall be closed within 24 hours of notification by the Department; and	\$50 per day, per APT.
	removed within 30 days from notification by the Department	\$500 per week, per APT.
Conduct an engineering assessment and produce a site plan and photographs and provide an estimate of installation costs for replacement, reinstallation or relocation of an APT.	60 days from notification from DOT	\$200 per week per site plan and photographs not produced or estimate of installation costs not provided
Replacement, reinstallation or relocation of an APT.	90 days from all required City approvals	\$200 per week per APT not installed and operational within 90 days
Removal of a Information/Computer Kiosk including sidewalk restoration.	10 days from notification by the Department	\$50 per day, per Kiosk.
Replacement, reinstallation or relocation of a Information/Computer Kiosk.	Upon request from the Department for the replacement, reinstallation or relocation of an Information/Computer Kiosk, the Company has 30 days to produce a site plan, photograph(s) and installation at the same or new location.	\$50 per week, per Kiosk.
Removal of a Trash Receptacle including sidewalk restoration.	5 days from the notification by the Department.	\$50 per day, per Receptacle.
Replacement, reinstallation or relocation of a Trash Receptacle.	10 days from notification by the Department	\$50 per week, per Receptacle.

Requirement	Standard	Liquidated Damage
Removal of a Multi-rack newssrack including sidewalk restoration.	10 days from notification by the Department	\$50 per day, per Multi-rack newssrack.
Replacement, reinstallation or relocation of a Multi-rack newssrack.	Upon request from the Department for the replacement, reinstallation or relocation of a multi-rack newssrack, the Company has 30 days to produce a site plan, photograph(s) and installation at the same or new location.	\$50 per week, per Multi news-rack
Removal of Advertisement	24 hours from notification by the Department to remove advertising per section 4.4. I	\$100 per day, per Advertisement
Removal of Advertisement	48 hours from notification by the Department to remove advertising per section 4 other than Section 4.4.1	\$100 per day, per Advertisement

Maintenance Standards

Requirement	Standard	Liquidated Damage
Sidewalk and Historic Pavement	Repair, replace, or restore to prior condition within one week after Company becomes aware of the problem.	\$200 per week, per location.
Electronic Inventory, Management Information System	Failure to provide the initial installation at no less than 5 DOT locations and initiate system training within 20 days of the effective date of the agreement.	\$50 per day per location.
	Failure to install at additional DOT locations within 5 business days of the Department's request for installation.	\$50 per day per location.
	Loss of access to system (system down time) and failure to restore within 6 hours of notification by the Department	\$35 per hour.
Cleaning and inspection of franchise structures (Bus shelters, exterior of Newsstands, PSS): will include, but not limited to: removal of stickers and graffiti, removal of debris, washing all glass, seating, roofs; replacing or repairing broken or burned out bulbs	Twice weekly on nonconsecutive days Daily inspection of Newsstand exterior.	\$50 per day per structure per failure for failure to clean and/or inspect.
	Within 24 hours after Company becomes aware of the problem	\$50 per occurrence.

Requirement	Standard	Liquidated Damage
Cleaning of APTs: will include, but not limited to cleaning all walls, floor, bowl and sink; confirming supplies like soap, toilet paper, disinfectant and seat covers are stocked and dispensers are functioning, removal of graffiti, stickers and debris, removal and replacement of broken lights and inspection other functions like hand dryer, water pressure, door, and air conditioning/heating.	Daily	\$50 per failure to clean daily, per APT
	Within 6 hours of inspection or after Company becomes aware of the problem.	\$50 per occurrence, per APT
Snow and ice removal within 3 feet of Franchise Structure and to the curb on the curb side of Franchise Structure including spreading salt or another preferable non-corrosive de-icer	In compliance with section 3.1 of the Franchise Agreement.	\$50 per occurrence, per structure.
More than ten percent (twenty percent for APTs after the installation of five APTs) of any one type of its Coordinated Franchise Structures out of service.	At any given time.	\$100 per occurrence, per day.

Inspection and Repair

Requirement	Standard	Liquidated Damage
Inspections of electrical wiring and connections on Coordinated Franchise Structures including service and post connections and testing for stray voltage.	At least once each year during the Term of the agreement with inspection dates recorded in the EIMIS.	\$500 per day per structure not receiving an inspection and stray voltage test by each anniversary of the Effective Date.
Preventative Maintenance Inspections for bus stop shelters, newsstands and PSSs.	Semi-annually. The first inspection occurring no later than seven months after the Effective Date with no less than five months between subsequent inspections. Inspection dates to be recorded in the EIMIS.	\$100 per day per structure not inspected.
Daily Preventative Maintenance Inspections for APTs: including but not limited to inspecting the seat cover dispenser, bowl cleaning and washstand systems, floor trap is functioning, pushbuttons, hardware and locks are all functioning, coin insertion and	Daily	\$100 per missed inspection, per APT

Requirement	Standard	Liquidated Damage
information displays panels checked, evacuation hopper grating is cleaned and entire outer surface and access door are cleaned, and inspection of bowl cleaning shower system.		
Monthly Preventative Maintenance Inspection for APTs: including but not limited to complete check of air conditioning/heating and ventilation system including ducts, check of interior lighting system, complete check of electric wiring and control panel, inspection of safety controls including alarms and indicators, check of pressurized air circuit, electric operated valves, complete review of water circuit and other items as outlined in proposal.	Monthly	\$100 per missed inspection, per APT
Replacement of broken, missing or damaged glass on all Franchise Structures	At regular inspection or within 48 hours after Company becomes aware of the problem.	\$100 per hour, per structure.
Repairs, replacement of parts, or removal of a structure or components as necessary to ensure public safety including removal of broken glass, or as required under Section 3.1.5(f)(1) as determined at the sole discretion of the Department	Completed within 24 hours after Company becomes aware of the problem unless a permit is required. Should a permit be required; the repairs or required work is to be completed within 24 hours of the receipt of permit	\$100 per hour, per structure.
Repairs, replacement of parts, or removal of a structure or components that do not pose a risk to public safety or as required under Section 3.1.5(f)(2) as determined at the sole discretion of the Department	Completed within 5 days after Company becomes aware of the problem unless a permit is required. Should a permit be required; the repairs or required work is to be completed within 5 days of the receipt of permit.	\$100 per day, per structure.

Appendix B: New Newsstand Costs

New Newsstand Build-out Costs

Section 20-241 of the Administrative Code provides that a newly licensed newsstand operator (defined as an operator who is issued a license after the effective date of the franchise agreement) shall pay the franchisee for the costs of construction and installation of a new newsstand. The reimbursement cost shall be the standard cost set forth below; provided however, such cost may be adjusted, at the request of the Company, and in the City's discretion, subject to Section 20-241(c)(2) of the Administrative Code.

The standard cost of a newsstand will be \$25,000 for new licenses issued through December 31, 2005, and the standard cost of any future newsstands will be adjusted annually thereafter, beginning January 1, 2006, by the rate of inflation for the previous calendar year based upon the change in the Consumer Price Index Urban (CPIU) for the New York area.

Appendix G: Installation, Replacement and Removal of Franchise Structures: Timetables

Unless specified otherwise in the Amendment, the following timetables for installation, replacement and removal of Coordinated Franchise Structures shall apply:

*All installation are subject to the inspection provisions in Section 2.4.6(f)	
Bus Shelters*	
Installation of a Bus Shelter not specified on the Existing Bus Shelter Replacement Schedule, including Site Plan and Photographs	Upon request from the Department for a new bus shelter location the Company has 30 days to produce a site plan and photographs and 30 days for installation after the Company receives site plan approval from DOT in accordance with Section 2.4.6(a)(i)
Removal of a Bus Stop Shelter, including sidewalk restoration	5 business days from notification by Department
Replacement, reinstallation or relocation of a Bus Shelter	Upon request from the Department for a new bus shelter location the Company has 30 days to produce a site plan and photographs and 30 days for installation after the Company receives site plan approval from DOT, all in accordance with Section 2.4.6(a)(i)
Newsstands*	
Removal and replacement of an Existing Newsstand	The replacement of the Existing Newsstand should take place on the same day but, when possible, but no more than 9 days after the removal of the Existing Newsstand and removal shall take place by the date specified in the Replacement Newsstand Schedule, or date mutually agreed to by the Company and DOT
Installation of a newly licensed Newsstand	Upon request from the Department for a new newsstand location the Company has 30 days to produce a site plan and photographs and 30 days for installation after DOT approves Site Plan and Con Ed has provided all required approvals, all in accordance with Section 2.4.6(d)(ii)
Removal of abandoned or unoccupied Newsstand, including sidewalk restoration	5 business days from notification by Department
Automatic Public Toilets* (APT)	
Installation of an APT	Upon request from the Department for a new APT location the Company has 60 days to conduct an engineering assessment and produce a site plan and photographs and provide an estimate of installation costs and

	<p>90 days for installation after all required City approvals are received</p> <p>The Company’s obligations set forth above shall be tolled during (x) such time that the Company redesigns and retools the New APTs to adapt them for installation in the City, which redesigning and retooling, shall begin within fifteen (15) days of the date of this Amendment and shall take no longer than twelve (12) months and (y) any time that access to the site is blocked due to circumstances beyond the Company’s control.</p>
<p>Removal of an APT, including sidewalk and utility restoration</p>	<p>The APT shall be closed within 24 hours of notification by the Department and removed within 30 days from receipt of all approvals and utility shut-offs, after notification by the Department</p>
<p>Replacement, reinstallation or relocation of an APT</p>	<p>Upon request from the Department for the relocation of an APT, the Company has 60 days to conduct an engineering assessment and produce a site plan and photographs and provide an estimate of installation costs and 90 days for installation at the same or new location after all required City approvals are received.</p> <p>The Company’s obligations set forth above shall be tolled during (x) such time that the Company redesigns and retools the New APTs to adapt them for installation in the City, which redesigning and retooling, shall begin within fifteen (15) days of the date of this Amendment and shall take no longer than twelve (12) months and (y) any time that access to the site is blocked due to circumstances beyond the Company’s control.</p>
<p>Public Services Structures*</p>	
<p>Installation of a Trash Receptacle</p>	<p>10 days from notification by the Department</p>
<p>Removal of a Trash Receptacle, including sidewalk restoration</p>	<p>5 days from notification by the Department</p>
<p>Replacement, reinstallation or relocation of a Trash Receptacle</p>	<p>10 days from notification by the Department</p>

Installation of an Information/computer kiosks	Upon request from the Department for a new multi-rack newsrack, 30 days to produce a site plan and photographs and 60 days for installation after DOT approves site plan
Removal of an Information/computer kiosks, including sidewalk restoration	10 days from notification by the Department
Replacement, reinstallation or relocation of an Information/computer kiosk	Upon request from the Department for the relocation of an Information/computer kiosk, the Company has 30 days to produce a site plan and photographs and 60 days for installation after DOT approves site plan
Installation of a Multi-rack newsrack	Upon request from the Department for a new multi-rack newsrack, 30 days to produce a site plan, photographs and 30 days for installation after DOT approves site plan
Removal of a Multi-rack newsrack, including sidewalk restoration	10 days from notification by the Department
Replacement, reinstallation or Relocation of a Installation of a Multi-rack newsrack	Upon request from the Department for a new multi-rack newsrack, 30 days to produce a site plan and photographs and 30 days for installation after DOT approves site plan
Electronic Inventory, Management Information System	
Provide the initial installation at no less than 5 DOT locations and initiate system training	20 days of the effective date of the agreement
Install at additional DOT locations	Within 5 business days of the Department's request for installation
Loss of access to system (system down time)	Restoration within 6 days of notification by the Department
Advertising Panel	
Removal of Advertising per Section 4.4.1 of the Agreement	24 hours from notification by the Department
Removal of Advertising per Section 4, other than Section 4.4.1 of the Agreement	48 hours from notification by the Department

SCHEDULE C – GUARANTEED MINIMUM; ALTERNATIVE COMPENSATION

	Guaranteed Minimum		C
	A	B	
Year	Cash Component (\$\$)	Alternative Compensation Non-cash (\$\$)	Alternative Compensation Floor (\$\$)
Year 1 (1)	21,299	18,000	NA
Year 2 (1)	26,951	15,900	No Floor
Year 3 (1)	33,477	16,300	No Floor
Year 4 (1)	36,733	16,700	12,000
Year 5	39,606	17,100	12,360
Year 6	45,633	17,500	12,731
Year 7	46,898	18,000	13,113
Year 8	48,261	18,400	13,506
Year 9	49,633	18,900	13,911
Year 10	51,106	20,996.008	14,329
Year 11	52,588	21,396.008	14,758
Year 12	54,113	21,896.008	15,201
Year 13	55,682	22,396.008	15,657
Year 14	57,295	22,996.008	16,127
Year 15	58,954	23,496.008	16,661
Year 16	60,660	23,996.008	17,109
Year 17	62,401	24,596.008	17,622
Year 18	64,176	25,196.008	18,151
Year 19	50,000(2)	25,796.008	
Year 20	50,000(2)	26,396.008	
Year 21	35,000(3)	26,396.008	
Year 22	35,000(3)	26,396.008	
Year 23	35,000(3)	26,396.008	
Year 24	35,000(3)	26,396.008	
Year 25	35,000(3)	26,396.008	
TOTALS	1,140,466	547,936.127	

Dollars are in Thousands

(1) Represents Advance Payment of the Cash Component for the first four years of the Term, to be made in accordance with Section 9.3 of the Franchise Agreement.

(2) In addition, the City shall receive 50% of annual Gross Revenues in excess of \$105 million

(3) In addition, the City shall receive 50% of annual Gross Revenues in excess of \$110 million.

SCHEDULE D – FRANCHISE FEE REVISIONS

I. PSS REVISION

A. Multi-Rack Newsracks.

(i) Deduction in Cash. For each newsrack requested by DOT the Company shall make a one-time deduction of \$4,570 from the Cash Component of the Franchise Fee. Such deduction shall be made from the quarter payment in which such multi-rack newsrack was installed. Additionally, for each installed multi-rack newsrack the Company shall make a yearly deduction of \$1120 (evenly divided among each quarterly payment following installation) from the Cash Component of the Franchise Fee.

(ii) Addition to the Franchise Fee. No revenue shall be generated by the Company from the multi-rack newsracks.

B. Trash Receptacles.

(i) Deduction in Cash. For each trash receptacle requested by DOT the Company shall make a one-time deduction of \$624 from the Cash Component of the Franchise Fee. Such deduction shall be made from the quarter payment in which such trash receptacle was installed. Additionally, (a) for each trash receptacle installed on or within a Bus Shelter the Company shall make a yearly deduction of \$2160 (evenly divided among each quarterly payment following installation) from the Cash Component of the Franchise Fee and

(ii) for every other trash receptacle installed the Company shall make a yearly deduction of \$720 (evenly divided among each quarterly payment following installation) from the Cash Component of the Franchise Fee.

(ii) Addition to the Franchise Fee. Should the Company place sponsorship recognition on Trash Receptacles as permitted by the Agreement, it shall quarterly pay to the City, in accordance with Section 9 of the Agreement, 70% of PSS Gross Revenues derived from such trash receptacle.

C. Information/Computer Kiosks.

(i) Deduction in Cash. For each information/computer kiosk requested by DOT the Company shall make a one-time deduction of \$22,300 from the Cash Component of the Franchise Fee. Such deduction shall be made from the quarter payment in which such information/computer kiosk was installed. Additionally, for each installed information/computer kiosk the Company shall make a yearly deduction of \$3000 (evenly divided among each quarterly payment following installation) from the Cash Component of the Franchise Fee.

(ii) Addition to the Franchise fee. Should the Company place sponsorship recognition on an information/computer kiosk as permitted by the Agreement, it shall quarterly pay to the City, in accordance with Section 9 of the Agreement, 70% of PSS Gross

Revenues derived from such information/computer kiosk.

D. Installation and Maintenance Costs. The one time and quarterly deductions, as set forth above in A(i), B(i) and C(i), shall be increased by Consumer Price Index for All Urban Consumers, New York-Newark-Jersey City (CPI-U) on each anniversary of the Effective Date.

II. BUS SHELTER FEE ADJUSTMENT

With reference to Section 2.5.3.3(a) and 2.5.4.5(b) of this Agreement, the Bus Shelter Fee Adjustment shall be calculated for Schedule Y Bus Shelters and Fifth Avenue Bus Shelters as follows:

- A. For any Schedule Y Bus Shelter designated aa, which rating is based on the projected commercial advertising value of the applicable location, the annual deduction amount shall be \$342,000.
- B. For any Schedule Y Bus Shelter designated a, which rating is based on the projected commercial advertising value of the applicable location, the annual deduction amount shall be \$54,000.
- C. For any Fifth Avenue Bus Shelter that the Company is directed by the City to remove, the annual deduction amount shall be calculated as follows:
 - (i) In event that the Company's annual contract year Gross Revenue is \$110 million or greater, the annual deduction amount shall be \$550,000 for the first Fifth Avenue Bus Shelter, and such amount shall be increased for each additional Fifth Avenue Bus Shelter such that the amounts for the second through fifth additional Fifth Avenue Bus Shelters are \$605,000, \$660,000, \$715,000, and \$770,000, respectively, up to the sixth additional Fifth Avenue Bus Shelter, which amount shall be \$825,000, and which amount shall also apply to each additional Fifth Avenue Bus Shelter thereafter; and
 - (ii) If the event that Company's annual contract year Gross Revenue is below \$110 million, the annual deduction amounts set forth in C(i) directly above shall be increased by the annual deduction amounts set forth below, until the sum of such annual deduction amounts and annual contract year Gross Revenue equals \$110 million, up to a maximum additional amount of \$550,000 for the first Fifth Avenue Bus Shelter, and the maximum additional amount shall be increased for each additional Fifth Avenue Bus Shelter such that the maximum additional amounts for the second through fifth Fifth Avenue Bus Shelters are

\$605,000, \$660,000, \$715,000, and \$770,000, respectively, up to the sixth Fifth Avenue Bus Shelter, for which the maximum additional amount shall be \$825,000, which maximum additional amount shall also apply to each additional Fifth Avenue Bus Shelter thereafter.

- D. Any Bus Shelter Fee Adjustment shall be taken on an annual basis in the fourth quarter of each year of the Term, and the first annual deduction shall be prorated from the first full month after it is determined that such Bus Shelter Fee Adjustment shall be applied.

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SCHEDULE Y – SCHEDULE Y BUS SHELTERS

Columbus Circle (a)
Broadway between Broome Street and Spring Street (a)
Broadway between Howard Street and Grand Street (a)
5 th Avenue between 42 nd Street and 43 rd Street (aa)
5 th Avenue between 44 th Street and 45 th Street (aa)
5 th Avenue and 55 th Street (aa)
57 th Street and Lexington Avenue (a) * (scaffolding)
57 th Street and Park Avenue (a)
57 th Street between Madison Avenue and Fifth Avenue (aa)
57 th Street between Madison Avenue and Fifth Avenue (aa)
57 th Street and 5 th Avenue (aa) * (scaffolding)
57 th Street and 6 th Avenue (a)
57 th Street and 7 th Avenue (a) * (street construction)
5 th Avenue between 58 th Street and 59 th Street (aa)
5 th Avenue and 59 th Street (aa)
5 th Avenue between 61 st Street and 62 nd Street (a)
5 th Avenue and 65 th Street (a)
5 th Avenue between 66 th Street and 67 th Street (a)
5 th Avenue between 68 th Street and 69 th Street (a)
5 th Avenue and 71 st Street (a)
5 th Avenue between 74 th Street and 75 th Street (a)
5 th Avenue between 76 th Street and 77 th Street (a)
5 th Avenue and 79 th Street (a)
5 th Avenue and 84 th Street (a)
5 th Avenue between 86 th Street and 87 th Street (a)
5 th Avenue between 89 th Street and 90 th Street (a)
Madison Avenue between 46 th Street and 47 th Street (a)
Madison Avenue between 46 th Street and 47 th Street (a)
Madison Avenue between 49 th Street and 50 th Street (a)
Madison Avenue and 50 th Street (a)
Madison Avenue between 53 rd Street and 54 th Street (aa)
Madison Avenue between 54 th Street and 55 th Street (aa)
Madison Avenue between 55 th Street and 56 th Street (aa)
Madison Avenue between 57 th Street and 58 th Street (aa)
Madison Avenue between 59 th Street and 60 th Street (aa)
Madison Avenue and 63 rd Street (aa) * (scaffolding)
Madison Avenue between 65 th Street and 66 th Street (aa)
Madison Avenue between 69 th Street and 70 th Street (aa)

Madison Avenue between 69 th Street and 70 th Street (aa)
Madison Avenue and 71 st Street (aa)
Madison Avenue between 72 nd Street and 73 rd Street (a)
Madison Avenue between 74 th Street and 75 th Street (a)
Madison Avenue between 77 th Street and 78 th Street (a)
Madison Avenue between 83 th Street and 84 th Street (a)
14 th Street between 9th Avenue and Washington Street (a)
Hudson Street and 13th Street (a)
14th Street between 10th Avenue and Washington Street (a) * (scaffolding)
Hudson Street between 13th Street & Gansevoort Street (a)
42nd Street and Madison Avenue (a)
42nd Street and 5th Avenue (a)
42nd Street and Lexington Avenue (a)
34th Street between 5th Avenue and 6th Avenue (a)
34th Street and 10th Avenue (a)
6th Avenue and 45th Street (aa)
6th Avenue between 54th Street and 55th Street (aa)
5th Avenue between 16th Street and 17th Street (a) * (street construction)
5th Avenue between 13th Street and 14th Street (a)
5th Avenue between 9th Street and 10th Street (a)
Lafayette south of Astor Place (a)
6th Avenue and 59th Street (a)

- Locations where there exists construction work (including scaffolding or other physical impediments) as of the Effective Date of the First Amendment (“Delayed Sites”) are designated with an asterisk (*) above.

SCHEDULE Z
COMPANY COST BREAKDOWN FOR DEDUCTION AMOUNTS
AND SPECIAL INSTALLATION COSTS

The cost of the deduction and other amounts set forth below shall be yearly increased by the Consumer Price Index for All Urban Consumers, New York-Newark-Jersey City (CPI-U) on each anniversary of the Effective Date of the First Amendment.

Costs listed below are inclusive of all excavation work and utility installation and concrete pouring and shall be deducted from the Cash Component of the Franchise Fee. If any Site Work (as defined below) associated with the installation of Coordinated Franchise Structures other than Schedule Y Bus Shelter(s) is performed by a third party other than the Company or its contractor / subcontractor (for example, if performed by the Metropolitan Transportation Authority or the City), then the foregoing deduction will be reduced by the cost of the work performed as detailed in the Company's cost breakdown set forth below. For any work performed by a third-party other than the Company or its contractor/subcontractor that is not specifically itemized in this Schedule Z, the Company shall submit a detailed cost estimate for such work to DOT, and DOT and the Company shall, thereafter, mutually agree on the value of such work. The deduction shall be made from the Cash Component of the Franchise Fee to be paid in the fourth quarter of the year in which such Coordinated Franchise Structure was installed, unless otherwise noted below.

I. Bus Shelters Cost Information.

A. Single Bus Shelter.

i. Cash Component Deduction for DOT-Designated Bus Shelters (Single). For each single DOT-Designated Bus Shelter, the Company shall make a one-time deduction from the Cash Component of the Franchise Fee in accordance with Sections I(A)(ii) and I(C) hereof. Such deduction shall be made from the fourth quarter payment of the year in which such single DOT-Designated Bus Shelter was installed.

ii. Installation Costs.

The installation costs immediately below exclude foundations and trenching, which shall be charged at the actual cost depending upon the distance required to connect to the electrical grid (if applicable), as set forth in Section I(C)(i) below:

- \$43,000 per unit, installation including an advertising panel
- \$36,200 per unit, installation without an advertising panel

B. Double Bus Shelter.

i. Cash Component Deduction for DOT-Designated Bus Shelters (Double). For each double DOT-Designated Bus Shelter, the Company shall make a one-time deduction from the Cash Component of the Franchise Fee in accordance with Sections I(B)(ii) and I(C) hereof. Such deduction shall be made from the fourth

quarter payment of the year in which such double DOT-Designated Bus Shelter was installed.

ii. Installation Costs.

The installation costs immediately below exclude foundations and trenching, which shall be charged at the actual cost depending upon the distance required to connect to the electrical grid (if applicable), as set forth in Section I(C)(i) below:

- \$84,000 per unit, installation including an advertising panel
- \$70,000 per unit, installation without an advertising panel

iii. Double DOT-Designated Bus Shelter Installations. Each double DOT-Designated Bus Shelter shall count as two (2) Bus Shelter installations and two (2) Installed Bus Shelters. A double DOT-Designated Bus Shelter is a shelter that is greater than 25 feet in length.

C. Additional Installation Costs.

- i. **Foundation and Trenching:** In connection with the installation of DOT-Designated Bus Shelters, the Company will provide DOT with the distance required and related costs for the foundation and trenching to connect such Bus Shelters to the electrical grid, if applicable. In all cases, DOT shall approve or reject the distance and the cost of the connection prior to the Company commencing any roadway work. The cost for such foundations and trenching is, as of the date hereof, between \$120 and \$200 per linear foot (which \$200 pricing, includes additional amounts for (i) construction conducted outside of the standard workday and such additional labor costs and the related concrete plant opening fees, (ii) curb construction, (iii) additional concrete in the event that the necessary foundation is deeper than the standard six (6) inches, and (iv) waterproofing). In no case will such additional installation cost be more than the actual cost incurred by the Company for foundation work and trenching at the particular location, exclusive of overhead or profit.
- ii. **Special or Historic Pavements:** Certain historic and distinctive streetscapes may require additional consideration when undertaking installation and may require the incurrence of additional costs. In the event that DOT directs the Company to install a DOT-Designated Bus Shelter at a location with decorative or special pavers (*e.g.*, marble, granite, cobblestone, blue stone, etc.), such installation and/or trenching may be subject to deduction amounts in addition to the costs listed in this Schedule Z and such requirements shall be assessed on a site-by-site basis. In such event, the Company shall inform DOT of such sidewalk conditions and related costs of addressing an installation in such location, and the Company shall not proceed with the installation until DOT has

approved the procedure for installation and any additional costs that may be required. In no case will such additional installation cost be more than the actual cost incurred by the Company in connection with the installation of a DOT-Designated Bus Shelter at a location with decorative or special pavers, exclusive of overhead or profit. Upon such approval, the Company may install a DOT-Designated Bus Shelter at such location, and shall provide DOT with information required to evidence the additional costs (as well as any other back-up DOT may require, including, but not limited to, information regarding costs for the manufacturing and installation of the DOT-Designated Bus Shelter). In all cases the Company shall install DOT-Designated Bus Shelters in compliance with the Agreement, including responsibility for any damage to any sidewalk or historic pavement which occurs during installation, such that the sidewalk or historic pavement shall be restored to its original condition, subject to the inclusion of the DOT-Designated Bus Shelter at such location.

D. Reductions if any Site Work is Performed by a Third Party.

- i. "Site Work" as used in this Schedule Z shall include all work related to: (a) sidewalk opening/demolition; (b) trenching to power source (e.g., light pole); (c) underground conduit installation; (d) wire pull from power source to DOT-Designated Bus Shelter; (e) concrete restoration (post-installation of DOT-Designated Bus Shelter foundation plate installed by the Company), and (f) sidewalk resurfacing and finishing.
- ii. For clarity, DOT may perform some or all Site Work, directly or through a third party or sub-contractor, and in such event, the deductions set forth in this Section I shall reflect whatever reduction is applicable to the Company's cost for work that was undertaken by DOT directly, or indirectly through a sub-contractor, and not undertaken by the Company.

II. APTs

A. Deductions in the Cash Component. The Cash Component of the Franchise shall be adjusted as follows:

- i. For up to the first twenty (20) New APTs (*i.e.*, those New APTs installed pursuant to Section 2.4.6(b)(i)-(ii) of this Agreement) by the Unamortized APT Cost of any New APT.

Such deduction shall be made from the Cash Component of the Franchise Fee due in the fourth quarter of the last year of the Term.

- ii. For any New APTs installed after the twentieth (20th) New APT is installed (*i.e.*, those New APTs installed pursuant to Section 2.4.6(b)(iii) of this Agreement), (x) the full

cost of the purchase of such New APT, which shall be \$250,000 plus (y) cost of installation of such New APT, an estimate for which will be provided by the Company in accordance with Appendix G.

Such deduction shall be made from the Cash Component of the Franchise Fee due in the fourth quarter of the year that the applicable New APT was installed.

- B. For each New APT, the “Unamortized APT Cost” shall mean \$250,000 less the total depreciation allocated for such New APT through the expiration of the Term of this Agreement (or earlier removal of such New APT in accordance with this Agreement).

The formula used to determine the amortization period of the Unamortized APT Cost shall be calculated as follows:

- i. On a straight-line basis over a 20-year period; and
- ii. using the actual date of installation of such New APT; and,
- iii. the cost of purchasing each New APT is \$250,000.

- C. With respect to those New APTs installed pursuant to Section 2.4.6(b)(i)-(ii) of this Agreement, in the event the City directs the Company to install a New APT at a location which, after review by the Company, is projected to require installation costs in excess of \$400,000 (as adjusted annually), the Company shall not be required to install a New APT at such location. In such event and if the City determines that such location remains desired for a New APT installation, then the Company shall install such New APT and amounts incurred by the Company for such installation in excess of \$400,000 (as adjusted annually) shall also be deducted from the Cash Component due in the fourth quarter payment of the year in which such New APT is installed.

Franchise and Concession Review Committee

Administrative Procedures

1) Membership

The members of the Franchise and Concession Review Committee (hereafter called the Committee) shall deposit with the Clerk a written document designating one person to act as their designee. In the absence of both a member and such member's designee, another person may be designated in the interim by a signed document deposited with the Clerk.

2) Committee Proceedings

a) Meetings

- i) Regular Committee meetings shall be held according to a schedule and at a location to be noticed for the Committee and the public by the Clerk.
- ii) Special Committee meetings may be called by the Chair, written notice of which shall be given to each Committee member by the Clerk.
- iii) A quorum shall consist of five members in the case of a franchise and four members in the case of a concession and in all other matters.
- iv) The Clerk shall post a notice, indicating the time and location, of regular and special Committee meetings in the City Record and shall inform the media of all meetings, as required by the Open Meetings Law. Meeting information shall also be sent to each affected Community Board and each affected Borough President.
- v) An agenda shall be created by the Clerk and distributed to Committee members and Borough Presidents at least one week prior to a regular meeting. Placement of additional items on the agenda after it has been distributed to Committee members shall require the approval of four members.

- vi) Only Committee members or their designees, officials or employees of City agencies, or such other persons as the Committee determines, may address the Committee at a meeting.
- vii) Committee meetings shall be recorded by the Clerk, and the recordings shall be made publicly available.
- viii) The Committee shall act by resolution which shall require for adoption five affirmative votes in the case of a franchise and four affirmative votes in the case of a concession and in all other matters. The proposed resolution, if adopted by the Committee, shall be certified by the Clerk.

b) Hearings

- i) In the case of a franchise or a significant concession, a public hearing shall be held within 30 days of the certification of a complete submission by the Clerk and the Law Department.
- ii) A franchise or a significant concession matter may not be voted on the same day in which the hearing on that matter is conducted.
- iii) Members of the public who wish to address the Committee at a hearing must register with the Clerk.
- iv) The Committee may establish a limit on the time available to each member of the public for speaking at a hearing, which limit shall not be less than three minutes.
- v) Notice of all hearings and a summary of the terms and conditions of the proposed agreements shall be published once in the City Record by the submitting agency not less than fifteen days prior to the hearing. Notice of such hearings, indicating the place where copies of the proposed agreement may be obtained by all those interested, shall also be published by the submitting agency on a City website or other publicly accessible location as determined by the Clerk. A copy of such notices

shall also be sent to each affected Community Board and each affected Borough President.

- vi) Public hearings shall be recorded by the Clerk, and the recordings shall be made publicly available.

c) Document Submissions

- i) The Clerk and the Law Department shall receive submissions to the Committee from City agencies, and the Clerk shall distribute them to all members. Submissions must be provided in the format specified by the Clerk. A submission will be considered complete when the Clerk determines it to be complete.
- ii) If applicable, PASSPort enrollment of a selected franchisee or concessionaire or certification at time of award that all previously submitted information is current, accurate, and complete is considered a required part of a complete submission.
- iii) Submissions must be received according to the schedule established by the Clerk to have the item added to the agenda for a Committee hearing or meeting. Submissions must be certified complete by the Clerk.
- iv) All hearing and meeting documents shall be finalized and distributed to the Committee by the deadline of the relevant Notice of Public Hearing, as specified by the Concession Rules.
- v) Additional information may be requested prior to a hearing or meeting by Committee members through the Clerk, who shall distribute the agency's response to the requesting Committee member(s), or additional information may be requested directly at Committee hearings or meetings.
- vi) The submission shall include a proposed resolution for adoption, if applicable, and the following information:
 - (1) For a public hearing and/or meeting regarding a franchise:
 - (a) the borough(s) served;
 - (b) a description of the proposed franchise;

- (c) the authorizing resolution and any subsequent modifications;
 - (d) an explanation of the land use history, if any (include ULURP and CEQR determinations, where applicable);
 - (e) the request for proposals or other solicitation;
 - (f) a description of the selection process used;
 - (g) the proposed franchisee's qualifications or expertise;
 - (h) a list of the board of directors of the proposed franchisee;
 - (i) the proposed agreement; and
 - (j) any other relevant information as determined by the Clerk or the Committee.
- (2) For a public hearing and/or meeting regarding a concession:
- (a) the borough in which the concession is located, including street address and block and lot numbers (or nearest streets if block and lot numbers are not available);
 - (b) a summary of the proposed concession use;
 - (c) an explanation of the land use history, if any (include ULURP and CEQR determinations, where applicable);
 - (d) an explanation of the reasons for not soliciting bids or proposals as set forth in the Concession Rules, if applicable;
 - (e) the request for proposals, if applicable;
 - (f) a description of the procedure by which the proposed concessionaire was selected;
 - (g) all relevant financial data;
 - (h) the proposed agreement; and
 - (i) any other relevant information as determined by the Clerk or the Committee.

d) Videoconferencing

As allowable by Open Meetings Law and at the discretion of the Clerk, videoconferencing may be used to conduct hearings or meetings, provided that:

- i) a minimum number of members are present to fulfill the quorum requirement in the same physical location or locations where the public can attend;
- ii) members of the Committee are physically present at any hearing or meeting unless such member is unable to be physically present due to extraordinary circumstances

- including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance;
- iii) the Committee members can be heard, seen, and identified, while the hearing or meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon;
 - iv) the relevant public notice shall inform the public that videoconferencing will be used, where the public can view and/or participate in such hearing or meeting, where required documents and records will be posted or available.

3) Mayoral Approvals (Franchises)

The submitting agency shall forward to the Mayoral designee all materials for approval as required in Charter Section 372. The agency shall receive from the Mayoral designee notice of such approvals or disapprovals.

4) Amendments to Procedures

Proposed amendments to the Administrative Procedures must be submitted in writing to the Clerk at least 21 days prior to a meeting. Proposed amendments shall require four affirmative votes for adoption.

5) Annual Review

The Administrative Procedures and the Concession Rules shall be reviewed by the Committee annually after final adoption. Any amendments to the Administrative Procedures shall be made pursuant to the above procedure (Sec. 4.). Any amendments to the Concession Rules shall be made in accordance with the City Administrative Procedures Act.

Amended [date]



NEW YORK CITY DEPARTMENT OF

HEALTH AND MENTAL HYGIENE

Ashwin Vasan, MD, PhD

Commissioner

MEMORANDUM

TO: All Borough Presidents
All Community Boards

FROM: Cynthia Mont-Burbon, Director of Contracts
Center for Health Equity and Community Wellness (CHECW)

SUBJECT: Franchise and Concession Review Committee approval of a different procedure to negotiate an amendment to the concession agreement between the City of New York acting by and through the Department of Health and Mental Hygiene and OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents, known as the Big Apple Rx.

DATE: April 4, 2023

In accordance with Section 1-16 of the Concession Rules of the City of New York, this is to notify all Borough Presidents and Community Boards that the New York City Department of Health and Mental Hygiene (DOHMH) is seeking Franchise and Concession Review Committee approval to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents, known as the Big Apple Rx.

This amendment to the concession agreement will extend the agreement for an additional thirty (30) months in order to ensure continuous operation of the NYC Drug Discount Card program for such period while the DOHMH selects a new concessionaire through a request for proposal process.

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

If you have any questions or comments, please contact Cynthia Mont-Burbon by telephone at (347) 396-4242 or via e-mail at cmontbur@health.nyc.gov.

Thank you.

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

AGENCY: New York City Department of Health and Mental Hygiene	CONCESSION TITLE/DESCRIPTION: <u>To develop, operate and administer the NYC Prescription Drug Discount Card Program</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # <u>11HM000701R2T04</u>

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

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

Different Procedure * (Sole Source Agreement Other Intent to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Prescription Drug Discount Card Program available to all NYC residents.

Negotiated Concession*

Recommended Concessionaire OptumRx Discount Card Services, LLC EIN SSN # 31-1728846
 Attach Memo(s) *

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

CONCESSION TYPE (Check all that apply)

> **Significant Concession:**

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

> **Major Concession:**

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

NOTIFICATION REQUIREMENTS

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

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

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

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

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

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

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in

advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

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

AUTHORIZED AGENCY STAFF

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

Name Erika Yan Title Deputy Agency Chief Contracting Officer

Signature *Erika Yan* Date 5/1/23

CITY CHIEF PROCUREMENT OFFICER

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

Signature _____ Date __/__/__
City Chief Procurement Officer

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

For the reasons stated below, the New York City Department of Health and Mental Hygiene ("DOHMH") seeks Franchise and Concession Review Committee ("FCRC") approval to use a different procedure, pursuant to Section 1-16 of the Concession Rules ("different procedure"), to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, for the development, operation and administration of the NYC Prescription Drug Discount Card Program available to all NYC residents.

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

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

When/if the FCRC approves the use of a different procedure to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, DOHMH anticipates that this amendment will extend the NYC Drug Discount Card Program for an additional thirty (30) months.

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

Pursuant to a competitive RFP process, DOHMH entered into a concession agreement, effective February 17, 2011, with Catamaran Discount Card Services, LLC (formally known as HealthTran, LLC dba HealthTrans), now known as OptumRx Discount Card Services, LLC ("OptumRx"), to develop, operate and administer the NYC Drug Discount Card Program to be made available to all NYC residents, known as the BigAppleRX. This agreement was amended previously to extend the term to December 31, 2021. DOHMH anticipated releasing a Request for Proposal and selecting a new concessionaire on or before December 2021. However, because of unforeseen delays in the development of the RFP due to changes in the scope of services, DOHMH now anticipates that a new concessionaire will be in place by July 1, 2024.

While DOHMH develops the RFP and completes the competitive solicitation process, there is a continued need to ensure that NYC residents have access to pharmaceutical drugs at discount prices. Since its debut in May 2011, BigAppleRx has saved New Yorkers over \$57 million as compared to retail prices of medications purchased, a reported overall savings of 40 percent, based on data reported by the Pharmacy Benefit Manager (PBM) for the BigAppleRx program. Currently, over 1 million IDNYC cards have been issued by the City with the BigAppleRX benefit feature on the card, enabling cardholders to purchase pharmaceutical drugs at discount prices provided by OptumRx (also referred to as "BigAppleRX provider"). Those IDNYC cards will remain in effect until 5 years after their effective date. IDNYC was scheduled to issue new cards in 2020 to cardholders who signed up at the program's inception in 2015. BARx remains an embedded

feature on IDNYC cards and cardholders continue to have access to discounted drugs under the program. DOHMH-IDNYC coordination to minimize potential disruptions and transition of services for a potential vendor change is on-going. In addition, BARx RFP program requirements include PBM outreach to IDNYC cardholders and updating IDNYC cardholders' BigAppleRx Bin/Group/PCN numbers on cardholders' cards. Given that the BigApple RX benefit is linked to these IDNYC cards, transitioning to a new provider will be administratively complicated and time consuming. Therefore, DOHMH believes that the City will be best served by negotiating an amendment to the concession agreement with OptumRx to enable the residents of New York City to continue to have access to pharmaceutical drugs at discount prices without interruption while DOHMH initiates a new competitive request for proposal process to select a new concessionaire.

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

In order to sustain uninterrupted services for the NYC Prescription Drug Discount Card Program (Step 1). DOHMH intends to seek FCRC authorization to negotiate an amendment to the concession agreement with OptumRx to extend the agreement for an additional thirty (30) months, as the existing agreement expired on December 31, 2021. Pending FCRC Step 1 approval, DOHMH intends to negotiate the terms of an extension with OptumRx.

Once negotiated and if determined by DOHMH to be a significant concession, DOHMH and the FCRC will hold a joint Public Hearing on the proposed amendment to the concession agreement before presenting it to the FCRC for "Step 2" approval at a second meeting. If DOHMH determines that the amendment to the concession to be non-significant, the agency will present the full negotiated amendment to the concession agreement with OptumRx to the FCRC and request the required FCRC authorization to enter into the amendment directly (without the need for an initial public hearing).

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

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

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

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

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

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 3)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Health and Mental Hygiene (“DOHMH”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the existing concession agreement with OptumRx Discount Card Services, LLC (formerly known as Catamaran Discount Card Services, LLC) to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents. DOHMH anticipates that the amendment, will extend the expiration date of the concession agreement from December 31, 2021 to June 30, 2024.

BE IT FURTHERED RESOLVED, that DOHMH shall submit the amendment to the concession agreement it proposes to enter into with OptumRx Discount Card Services LLC to the FCRC for approval.

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

June 14, 2023

Date: _____

Signed: _____

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



One Liberty Plaza New York, NY 10006

T: 212 619 5000

edc.nyc

Memo

To: Hon. Mark Levine, Borough President of Manhattan
Mr. Lucian Reynolds, District Manager, Community Board #1

From: Maryann Catalano, Chief Contracting Officer

Subject: Notice of intent to seek FCRC approval to utilize a different procedure to negotiate a significant Sole Source interim Concession Agreement with FirstFlight Heliports, LLC, d/b/a Saker Aviation Services for the operation of the Downtown Manhattan Heliport located at 20 South Street, Pier 6, in the borough of Manhattan, New York City

Date: April 7, 2023

CC: Anthony Dell'Olio, General Counsel, New York City Department of Small Business Services
Isabel Galis-Menendez, Deputy Chief, Contracts and Real Estate, New York City Law Department
FCRC@mocs.nyc.gov

Pursuant to Section 1-16 of the Concession Rules of the City of New York, please be advised that the New York City Economic Development Corporation (EDC), on behalf of the New York City Department of Small Business Services (SBS), intends to seek Franchise & Concession Review Committee to utilize a different procedure to negotiate a significant Sole Source interim Concession Agreement with FirstFlight Heliports, LLC, d/b/a Saker Aviation Service for the operation of the Downtown Manhattan Heliport (DMH). It is anticipated that this Sole Source interim Concession Agreement would provide for one (1) six (6) – month term, with two (2) six-month options to renew at the discretion of EDC. This Sole Source interim Concession Agreement intends to keep DMH operational while EDC, on behalf of SBS, procures for a heliport operator to enter into a new Concession Agreement, as the current Concession Agreement expires April 30, 2023.

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

Please direct any questions or comments you may have regarding the terms of the sole source to Mary Clarke by phone at (212) 312-3621 or via email at mclarke@edc.nyc. Thank you.

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

AGENCY: New York City Department of Small Business Services	CONCESSION TITLE/DESCRIPTION: Sole Source interim Concession Agreement for the Operation of the Downtown Manhattan Heliport
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # 10481

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

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

Different Procedure * (Sole Source Agreement Other _____)

Negotiated Concession*

Recommended Concessionaire: FirstFlight Heliports, LLC d/b/a Saker Aviation Services

26-2955312 EIN SSN #

Attach Memo(s) *

CONCESSION AGREEMENT TERM

Initial Term: 10.01.2023-3.31.2024
Renewal Option(s) Term: 4.01.2024-9.30.24;
 10.01.24-3.31.2025

One (1) six (6)-month term, with two (2) six-month options to renew at the discretion of SBS.

Total Potential Term: 18 months

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

Additional description attached

Annual Minimum Fee(s) \$ _____

% Gross Receipts _____%

The Greater of Annual Minimum Fee(s) of \$1,525,216.5 v. 18% of Gross Receipts until \$5,000,000 in revenues; 20% of gross receipts after \$5,000,000 in revenues

Other formula To be negotiated

LOCATION OF CONCESSION SITE(S)* N/A
Address 20 South Street, Pier 6, New York, NY, 10004
Borough Manhattan C.B. 1
Block # 00002 **Lot #** 0023

*Attach additional sheet

CONCESSION TYPE (Check all that apply)

> **Significant Concession:**

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

> **Major Concession:**

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

NOTIFICATION REQUIREMENTS

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

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

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

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

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

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

pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

- The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
- The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

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

Name Anthony Dell'Olio

Title General Counsel, NYC Department of Small Business Services

Signature _____

Date __/__/__

CITY CHIEF PROCUREMENT OFFICER

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

Signature _____

Date __/__/__

City Chief Procurement Officer

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

The New York City Department of Small Business Services (SBS) intends to seek Franchise & Concession Review Committee approval to utilize a different procedure to negotiate a significant Sole Source interim Concession Agreement with FirstFlight Heliports, LLC d/b/a Saker Aviation Services for the operation of the Downtown Manhattan Heliport (DMH).

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

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

It is anticipated that this Sole Source interim Concession Agreement would provide for one (1) six (6) – month term, with two (2) six-month options to renew at the discretion of SBS. The anticipated revenue terms will be the Greater of Annual Minimum Fee(s) of \$ 1,525,216.5 v. 18% of Gross Receipts until \$5,000,000 in revenues; 20% of gross receipts after \$5,000,000 in revenues.

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

This Sole Source Agreement intends to keep the Downtown Manhattan Heliport operational while SBS undergoes a 1-13 procedure to select a heliport operator to enter into a new agreement, as the current agreement expired April 30, 2023.

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

The intention is to enter into a sole source agreement on an interim basis with the current operator (FirstFlight Heliports, LLC d/b/a Saker Aviation Services) while a 1-13 request for proposals is undergone.

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

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

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

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

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

CITY OF NEW YORK
FRANCHISE AND CONCESSION REVIEW COMMITTEE
(Cal. No. #_4_)

BE IT RESOLVED that the Franchise and Concession Review Committee (“FCRC”) hereby authorizes The New York City Department of Small Business Services (“SBS”) to utilize a different procedure to negotiate a significant Sole Source interim Concession Agreement (“Agreement”) with FirstFlight Heliports, LLC d/b/a Saker Aviation Services, to provide for the operation of the Downtown Manhattan Heliport (“DMH”). It is anticipated that this Agreement would provide for one (1) six (6) – month term, with two (2) six-month options to renew at the discretion of SBS. This Agreement intends to keep DMH operational while SBS selects a heliport operator to enter into a new agreement.

BE IT FURTHER RESOLVED that SBS shall submit the Agreement it proposes to enter into with FirstFlight Heliports, LLC d/b/a Saker Aviation Services to the FCRC for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE

FRANCHISE AND CONCESSION REVIEW COMMITTEE ON JUNE 14, 2023.

Date: _____

Signed: _____

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