

**AN ORDINANCE BY  
CITY UTILITIES COMMITTEE**

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A  
FRANCHISE RENEWAL AGREEMENT WITH NEXTG  
NETWORKS OF NY, INC. D/B/A NEXTG NETWORKS EAST, TO  
PROVIDE TELECOMMUNICATIONS SERVICES USING  
PUBLIC RIGHT-OF-WAY; SPECIFYING THE COMPENSATION  
DUE THE CITY OF ATLANTA BY THE FRANCHISE  
AGREEMENT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta, ("City") did enter into an agreement ("Agreement") with NextG Networks of NY, Inc., d/b/a/ NextG Networks East ("NextG Networks" or "Grantee"), for the provision of telecommunications services on, under, over and through the public right-of-way of the City, pursuant to Ordinance 04-O-1750; and

**WHEREAS**, said Agreement contained a five (5) year base term with two (2) one-year renewal options upon the mutual consent of the parties; and

**WHEREAS**, Grantee has operated a franchise in the City and desires to continue to provide telecommunications services on, under, over and through the public right-of-way of the City; and

**WHEREAS**, Grantee formally applied for renewal of its franchise in December 2008; and

**WHEREAS**, the Mayor's Office of Communications has recommended the renewal of the Grantee's franchise agreement; and

**WHEREAS**, NextG Networks, has negotiated a franchise renewal agreement with the City, which allows it to continue to provide telecommunications services on, under, over and through the public right-of-way and also preserves the rights of the City and its compensation schedule.

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF ATLANTA,  
GOERGIA HEREBY ORDAINS:**

**SECTION 1:** That the Mayor be and is hereby authorized to execute a franchise renewal agreement with NextG Networks of NY, Inc. d/b/a NextG Networks East, for use of the public right-of-way for telecommunications purposes.

**SECTION 2:** That such franchise renewal agreement shall expire and terminate one (1) year from its signed and executed Effective Date.

**SECTION 3:** That in accordance with City Code Sections 138-126 et. seq., NextG Networks of NY, Inc. d/b/a NextG Networks East, shall pay the City an annual franchise

fee equal to three percent (3%) of Gross Revenues to the City, provided that in any calendar year that Grantee's Gross Revenue does not exceed \$500,000.00, the Franchise Fee shall be \$15,000.00 per year; provided further, however, that in no event will the Franchise Fee exceed an annual inflation-based cap. Under this Agreement, this cap will be set at eleven million dollars (\$11,000,000.00) annually. The Grantee's obligation to pay the Franchise Fee shall commence on the Effective Date and continue throughout the Term; fees shall be paid on a quarterly basis for the preceding quarter, and shall be due on April 15, July 15, October 15, and the 15<sup>th</sup> day of January of each year throughout the Term. In the quarter, the Franchise Fee shall be prorated relative to the number of days in the quarter that the Franchise is in effect. On or before each quarterly payment date, Grantee shall provide a certificate, signed and attested to by the appropriate corporate officers or authorized corporate representatives, which verifies Grantee's Gross Revenues for the prior quarter.

**SECTION 4:** That the City Attorney shall prepare a franchise renewal agreement containing all of the foregoing terms, which shall be approved by the City Attorney as to form.

**SECTION 5:** That said franchise renewal agreement shall not be binding on the City until executed by the Mayor, sealed by the Municipal Clerk and delivered to NextG Networks of NY, Inc. d/b/a NextG Networks East.

***Part II: Legislative White Paper:*** (This portion of the Legislative Request Form will be shared with City Council members and staff)

**A. To be completed by Legislative Counsel:**

**Committee of Purview:** City Utilities Committee

**Caption:** AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE RENEWAL AGREEMENT WITH NEXTG NETWORKS OF NY, INC. D/B/A NEXTG NETWORKS EAST, TO PROVIDE TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY; SPECIFYING THE COMPENSATION DUE THE CITY OF ATLANTA BY THE FRANCHISE AGREEMENT; AND FOR OTHER PURPOSES.

**Council Meeting Date:** March 16, 2009

**Requesting Dept.:** Department of Public Works

**B. To be completed by the department:**

**1. Please provide a summary of the purpose of this legislation (Justification Statement).**

The purpose of this legislation is to execute a franchise renewal agreement with NextG Networks for telecommunications services used in the public right-of-way. This legislation also defines the compensation owed to the City under the terms of this Agreement.

**2. Please provide background information regarding this legislation.**

The City of Atlanta executed a franchise agreement with NextG Networks of New York, Inc., pursuant to Ordinance 04-O-1204, adopted by the Atlanta City Council and approved by the Mayor on August 20, 2004. Ordinance 04-O-1750 corrected the provisions of 04-O-1204 and amended the terms of the previously authorized agreement from two (2) years to five (5) years in order to put NextG on the same franchise terms as other telecommunications providers in the City.

**3. If Applicable/Known:**

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

**(c) Bids/Proposals Due:**

**(d) Invitations Issued:**

**(e) Number of Bids:**

**(f) Proposals Received:**

**(g) Bidders/Proponents:**

**(h) Term of Contract:** Renewal Agreement shall expire and terminate one (1) year from its signed and executed Effective Date.

**4. Fund Account Center:**

**5. Source of Funds:**

**6. Fiscal Impact:**

**7. Method of Cost Recovery:**

**This Legislative Request Form Was Prepared By:**

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Soraya Belgrave

Contact Number: (404) 330-6002

Originating Department: Mayor's Office of Communications

Committee(s) of Purview: City Utilities Committee

Chief of Staff Deadline: February 24, 2009

Anticipated Committee Meeting Date(s): March 10, 2009

Anticipated Full Council Date: March 16, 2009

Legislative Counsel's Signature: Stefanie Grant

Commissioner Signature: [Handwritten Signature]

CAPTION

**AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE RENEWAL AGREEMENT WITH NEXTG NETWORKS OF NY, INC. D/B/A NEXTG NETWORKS EAST, TO PROVIDE TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY; SPECIFYING THE COMPENSATION DUE THE CITY OF ATLANTA BY THE FRANCHISE AGREEMENT; AND FOR OTHER PURPOSES.**

Mayor's Staff Only

Received by CPO: \_\_\_\_\_ Received by LC from CPO: \_\_\_\_\_  
(date) (date)

Received by Mayor's Office: [Handwritten Signature] 1/19/09 Reviewed by: [Handwritten Signature]  
(date) (date)

Submitted to Council: \_\_\_\_\_