

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 1)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation ("Parks") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement ("License Agreement") with Cirque du Soleil America, Inc. for the operation, maintenance, and management of a circus at the Harlem River Event Site at Randall's Island Park, Manhattan.

**BE IT FURTHER RESOLVED**, that Parks shall submit the License Agreement it proposes to enter into with Cirque du Soleil America, Inc. to the Franchise and Concession Review Committee for approval.

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

September 9, 2015

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

AGENCY: <u>New York City</u> Department of Parks & Recreation	<b>CONCESSION TITLE/DESCRIPTION:</b> Sole Source License Agreement with Cirque du Soleil America, Inc. for the Operation, Maintenance, and Management of a Circus at the Harlem River Event Site at Randall's Island Park, Manhattan.
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> M104-O

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

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

Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)

Negotiated Concession\*

Recommended Concessionaire Cirque du Soleil America, Inc.  EIN  SSN # 88-0355682  
 Attach Memo(s) \*

<b>CONCESSION AGREEMENT TERM</b> Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u> Total Potential Term: <u>To be negotiated</u>	<b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply) <input type="checkbox"/> Additional description attached <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts <input checked="" type="checkbox"/> Other formula <u>To be negotiated</u>
<b>LOCATION OF CONCESSION SITE(S)*</b> <input type="checkbox"/> N/A Address: <u>Randall's Island Park: Harlem River Event site</u> <u>Borough Manhattan C.B. 11</u> <u>Block # 1819 Lot # 203</u> *Attach additional sheet	

**CONCESSION TYPE (Check all that apply)**

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

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

If NO, check the applicable box below:

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

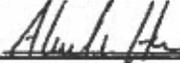
The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

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

**AUTHORIZED AGENCY STAFF**

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

Name Alexander Han Title Deputy Director of Concessions

Signature 

Date 8/26/15

**CITY CHIEF PROCUREMENT OFFICER**

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

Signature   
City Chief Procurement Officer

Date 8/26/15

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

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

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

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

To be determined at a later date - when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a different procedure to negotiate a License Agreement with Cirque du Soleil America, Inc. ("Cirque") to operate, maintain, and manage a circus at the Harlem River Event Site at Randall's Island Park, Manhattan.

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

Parks believes that pursuing a License Agreement with Cirque is in the City's best interest because of the unique nature of the services and activities offered by Cirque.

Cirque has extensive experience running professional operations throughout the world. It has an outstanding history of producing specialized events, with highly trained staff and performers and utilizes its own infrastructure. The Cirque set up is extremely low impact and self-contained, providing Randalls' Island Park Alliance with much needed revenue while not interfering with the normal operations and usage of Randall's Island Park. In fact, Cirque's 2003, 2004, 2006, and 2009 shows at Randall's Island Park were successful and ran smoothly.

As Parks believes it is in the City's best interest to offer this service to the public, Parks is requesting approval to negotiate a License Agreement with Cirque to operate, maintain, and manage a circus at the Harlem River Event Site at Randall's Island Park, Manhattan.

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

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules, to negotiate a License Agreement with Cirque, which will go before the FCRC on September 9, 2015 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed License Agreement before presenting it to the FCRC for "Step 2" approval at

a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated License Agreement with Cirque to the FCRC and request the required FCRC authorization to enter into the License Agreement directly (without the need for an initial joint public hearing).

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

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

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

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

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



NYC Parks

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

T 212.360.1302

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City of New York  
Parks & Recreation

The Arsenal  
Central Park  
New York, NY 10065  
[www.nyc.gov/parks](http://www.nyc.gov/parks)

## MEMORANDUM

**TO:** Hon. Gale Brewer, President of the Borough of Manhattan  
Mr. Angel D. Mescain, District Manager, Manhattan Community Board 11

**FROM:** Eitan Adler, Revenue Senior Project Manager *EA*

**SUBJECT:** Notice of Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with Cirque du Soleil America, Inc. for the Operation, Maintenance, and Management of a Circus at the Harlem River Event Site at Randall's Island Park, Manhattan

**DATE:** July 31, 2015

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Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board 11 that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Cirque du Soleil America, Inc. for the operation, maintenance, and management of a circus at the Harlem River Event Site at Randall's Island Park, Manhattan.

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

If you have any questions or comments, please feel free to contact Eitan Adler, Senior Project Manager, by phone at (212) 360-3454 or via email at [eitan.adler@parks.nyc.gov](mailto:eitan.adler@parks.nyc.gov)

## **RESOLUTION**

### **FRANCHISE AND CONCESSION REVIEW COMMITTEE**

#### **CITY OF NEW YORK**

##### **Cal. No. 2**

In the matter of 1) approval of a proposed change in beneficial ownership of public communications structure franchisee CityBridge, LLC (“CityBridge”); and 2) amendment to the franchise agreement between the City of New York (“City”) and CityBridge.

WHEREAS, pursuant to Authorizing Resolutions 2309 and 191, (adopted by New York City Council on December 21, 2009 and August 25, 2010 respectively), the New York City Department of Information Technology and Telecommunications (“DoITT”) issued a request for proposals for franchises for the provision of public communications structures on City sidewalks that would provide public pay telephone services and wifi services, as permitted by said Authorizing Resolutions; and

WHEREAS, on April 28, 2014 the New York City Department of City Planning determined that a franchise, consistent with the request for proposals, would not have land use impacts or implications and that review under Section 197-c of the New York City Charter would not be necessary; and

WHEREAS, on April 30, 2014, DoITT issued a Request for Proposals for a Franchise to Install Public Communications Structures in the Boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island; and

WHEREAS, on December 10, 2014, a franchise agreement granted pursuant to the Request for Proposals was approved by the Franchise and Concession Review Committee (“FCRC”)’ and

WHEREAS, CityBridge has requested an indirect organizational change above the parent company level, which will result in a beneficial ownership of more than 40 percent of the franchisee; and

WHEREAS, by such change, Intersection Holdings, LLC (“Intersection”), will become the parent company of CityBridge member parent companies Titan Outdoor Holdings, Inc., and Control Group Ventures, LLC; Intersection will obtain voting control of those parent companies, and indirect control of CityBridge members Titan Outdoor LLC and CG Partners LLC; and

WHEREAS, the City and CityBridge desire an amendment to the franchise agreement the purpose of which is to modify the franchise agreement to include additional rights and responsibilities of the parties, including: the provision of Wi-Fi Services to Gigabit Centers; clarification of state of the art reporting, technology refresh requirements, and data rights; more detailed maintenance and monitoring system specifications; and corresponding changes to the related provisions in the franchise agreement; and

WHEREAS, The FCRC held a public hearing, on September 8, 2015, regarding the proposed change in beneficial ownership and proposed amendment to the franchise 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 proposed CityBridge, LLC change in beneficial ownership and proposed amendment.

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

**SEPTEMBER 10, 2015**

Date: \_\_\_\_\_

Signed \_\_\_\_\_

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



**RECOMMENDATION FOR APPROVAL OF ORGANIZATIONAL CHANGE IN BENEFICIAL OWNERSHIP AND FRANCHISE AMENDMENT 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 RESOLUTIONS (Attach copy)**

1. Mayor's Office of Legislative Affairs transmitted proposed authorizing resolution to City Council.
2. City Council conducted public hearing on 12/15/2009; 5/17/2010 and continued to 8/23/2010.
3. City Council adopted authorizing resolution on 12/21/2009; 8/25/2010.

**B. SOLICITATION/EVALUATION/AWARD**

1. RFP/solicitation document issued on: 04/30/2014. (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.

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

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

*List of proposers in descending order of initial overall score, or if applicable, final overall score  
For each proposer – 1) initial, and if applicable, final overall score and scores for each evaluated criterion (show scores at each evaluation stage); and 2) initial, and if applicable, final proposed revenue amount (or attach detailed documentation of revenue formula).*

*If applicable, identify the proposer(s) determined to be in the competitive range of technically viable proposals ("short list").*

- *Attach list of proposed franchisee's Board of Directors.*

- Recommended franchisee is highest rated proposer and offered highest amount of revenue (overall or for the competition pool).
- Recommended franchisee was sole proposer or was determined to be only responsive proposer (overall or for the competition pool), and the and agency certifies that a sufficient number of other entities had a reasonable opportunity to propose, the recommended franchisee meets the minimum requirements of the RFP or other solicitation and award is in the best interest of the City.  
*Explain:*
- The subject franchise is a non-exclusive franchise and the franchisee has been determined to be both technically qualified and responsible.
- Other *Describe:*

**C. PUBLIC HEARING & APPROVAL**

1. Agency filed proposed change with FCRC on 9/1/2015.
2. Public Hearing Notice
  - a. Agency published, for at least 15 business days immediately prior to the public hearing, a public hearing notice and summary of the proposed change in the City Record from 8/14/2015 - 09/08/2015.
  - b. Agency provided written notice containing a summary of the terms and conditions of the proposed change to each affected CB and BP by 08/14/2015. (Check the applicable box below and provide the requested information)
    - Franchise relates to property in one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in \_\_\_\_\_, a NYC daily, citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_, twice in \_\_\_\_\_, a NYC daily, citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by \_\_\_/\_\_\_/\_\_\_.
    - Franchise relates to property in more than one borough and, as such, agency additionally published a public hearing notice and summary of the proposed change twice in New York Post, a NYC daily, citywide newspaper on 08/19/2015 and 08/20/2015, and in Metro, also a NYC daily, citywide newspaper on 08/19/2015 and 08/20/2015. A copy of each such notice containing a summary of the terms and conditions of the proposed change was sent to each affected CB, each affected BP and each affected Council Member by 08/14/2015.
    - Franchise relates to a bus route contained within one borough only and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in \_\_\_\_\_, a NYC daily, citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_, and in \_\_\_\_\_, a NYC weekly, local newspaper published in the affected borough on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB and the affected BP by \_\_\_/\_\_\_/\_\_\_.
    - Franchise relates to a bus route that crosses one or more borough boundaries and, as such, agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in \_\_\_\_\_, a NYC daily, citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_, and in \_\_\_\_\_, also a NYC daily, citywide newspaper on \_\_\_/\_\_\_/\_\_\_ and \_\_\_/\_\_\_/\_\_\_ . A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB, each affected BP and each affected Council Member by \_\_\_/\_\_\_/\_\_\_ . A notice was posted in the buses operating upon the applicable route.
  - b. Franchise relates to extension of the operating authority of a private bus company that receives a subsidy from the City and, as such, at least 1 business day prior to the public hearing the Agency published a public hearing notice in the City Record on \_\_\_/\_\_\_/\_\_\_.
3. FCRC conducted a public hearing within 30 days of filing on 09/08/2015.

## NOTICE OF PUBLIC HEARING

NOTICE OF A FRANCHISE AND CONCESSION REVIEW COMMITTEE ("FCRC") PUBLIC HEARING to be held on Tuesday, September 8, 2015, commencing at 2:30 PM at 22 Reade Street, Borough of Manhattan, relating to: 1) proposed changes in the beneficial ownership of a public communications structure franchise currently held by CityBridge, LLC ("CityBridge"), whereby Intersection Holdings, LLC ("Intersection"), will become the parent company of CityBridge member parent companies Titan Outdoor Holdings, Inc., and Control Group Ventures, LLC. By that transaction, Intersection will obtain voting control of those parent companies, and indirect control of CityBridge members Titan Outdoor LLC and CG Partners LLC; and 2) a proposed amendment to the franchise agreement that will modify various sections including the maintenance and monitoring system, state of the art, ancillary services/data rights, and general description of services sections. The amendment will include a requirement for services to certain City designated facilities.

A copy of the proposed amendment and an ownership organization chart reflecting the proposed changes in beneficial ownership ("proposed organizational chart") may be viewed at DoITT, 2 Metrotech Center, 4<sup>th</sup> Floor, Brooklyn, NY, 11201, commencing August 24, 2015, through September 8, 2015, between the hours of 9:30 AM and 3:30 PM, excluding Saturdays, Sundays and holidays. Paper copies of the proposed amendment and the proposed organization chart may be obtained, by appointment, at a cost of \$.25 per page. All payments shall be made at the time of pickup by check or money order made payable to the New York City Department of Finance. The proposed amendment and proposed organization chart may also be obtained in PDF form at no cost, by email request. Interested parties should contact Brett Sikoff by email at [FranchiseOpportunities@doitt.nyc.gov](mailto:FranchiseOpportunities@doitt.nyc.gov).

NOTE: Individuals requesting sign language interpreters or any other accommodation of disability at the public hearing should contact the Mayor's Office of Contract Services, Public Hearing Unit, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING. TDD users should call Verizon relay service.

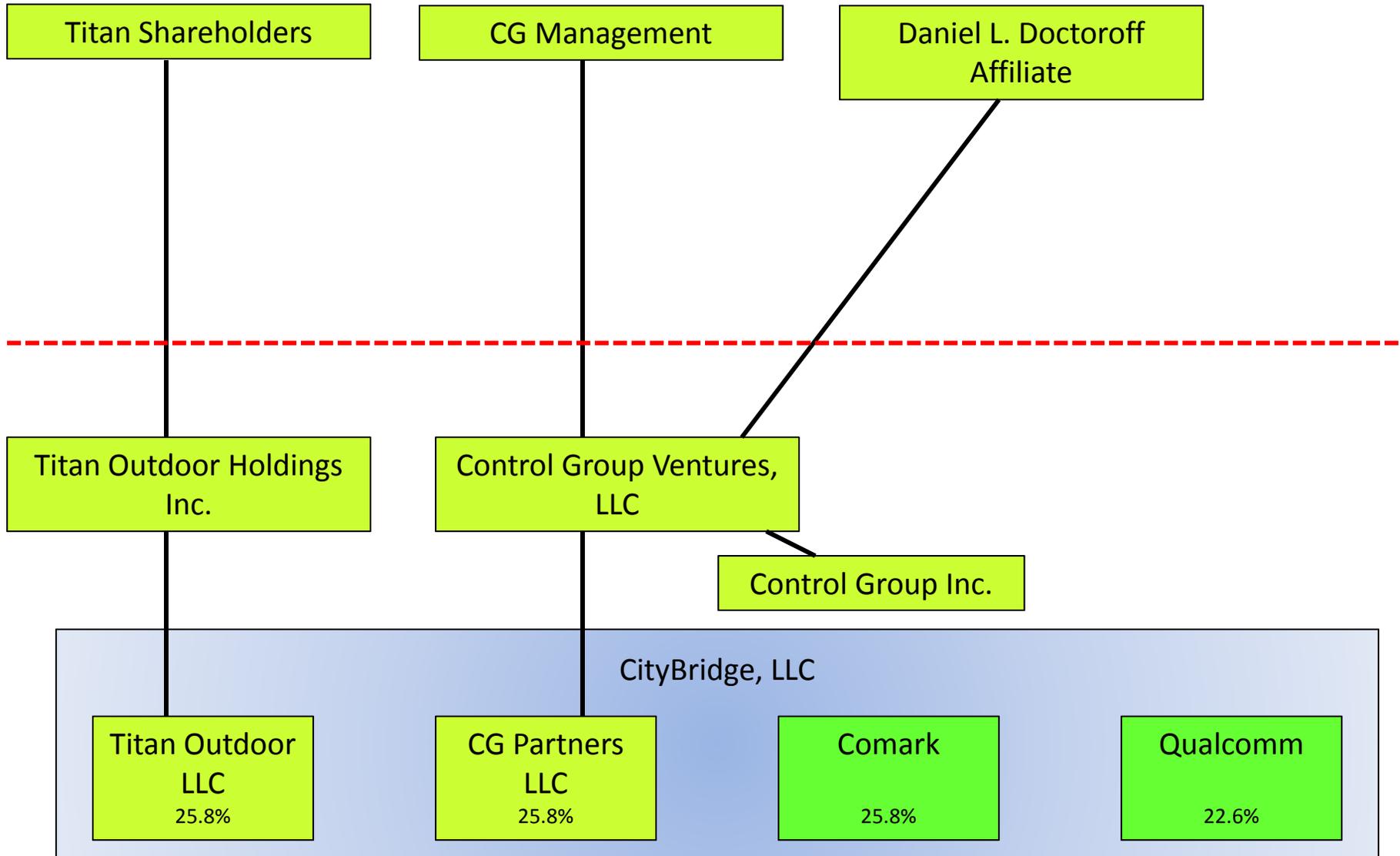
The Hearing may be cablecast on NYCMedia channels.



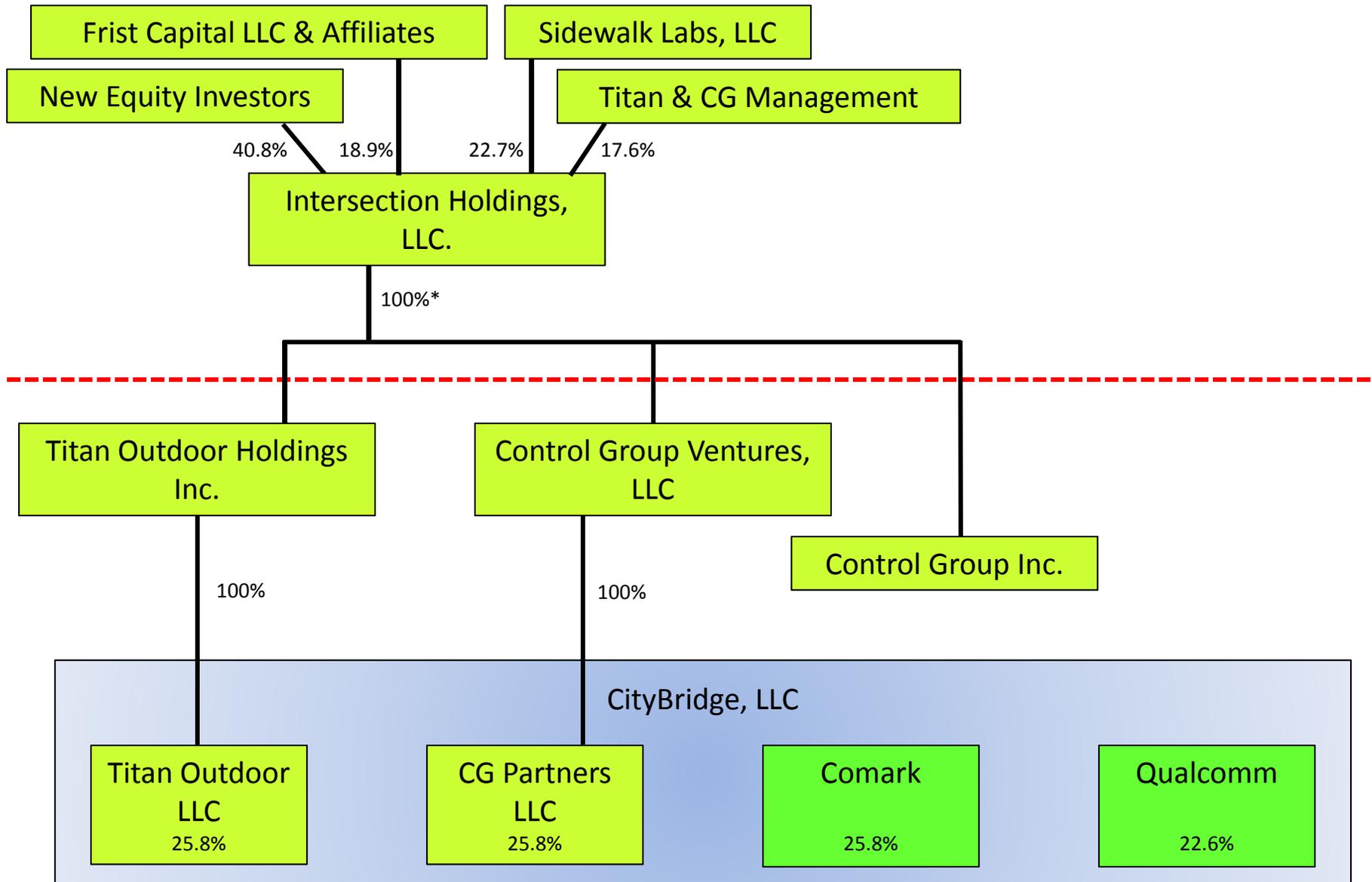
CityBridge, LLC  
Board of Directors

Colin O'Donnell (CG)  
Don Allman (Titan)  
Paul Fiskness (Qualcomm)  
Michael D'Amelio (Comark)

**EXHIBIT 1**  
**CURRENT ORGANIZATIONAL CHART**



**EXHIBIT 1 (cont.)**  
**NEW ORGANIZATIONAL CHART**



\*Indirectly through wholly-owned subsidiaries

**DEPARTMENT OF INFORMATION TECHNOLOGY AND  
TELECOMMUNICATIONS**

**AMENDMENT No. 1**

**TO**

**THE FRANCHISE AGREEMENT**

**BETWEEN THE CITY OF NEW YORK AND CITYBRIDGE, LLC**

**FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF PUBLIC COMMUNICATIONS  
STRUCTURES IN THE BOROUGHS OF THE BRONX, BROOKLYN, MANHATTAN, QUEENS AND  
STATEN ISLAND**

**Contract No. RCTI-858-20158202566**

THIS **AMENDMENT No. 1** modifies the above referenced **Agreement** by and between CityBridge, LLC, and the City of New York (“the City”), acting through its Department of Information Technology and Telecommunications (“DoITT”).

**PURPOSE OF AMENDMENT AND AUTHORITY**

The purpose of this Amendment No. 1 is to modify the Agreement to include additional rights and responsibilities of the parties, including: the provision of Wi-Fi Services to Gigabit Centers; clarification of state of the art reporting, technology refresh requirements, and data rights; more detailed Maintenance and Monitoring System specifications; and corresponding changes to related provisions in the Agreement documents.

This Amendment No. 1 is entered into pursuant to Section 15.18 of the Agreement and has satisfied all administrative prerequisites to its effectuation. The Franchise and Concession Review Committee (“FCRC”) held a public hearing on this Amendment No. 1, which was a full public proceeding affording due process in compliance with the requirements of Chapter 14 of the Charter. The FCRC, at its duly constituted meeting held on September 9, 2015, voted on and approved the modifications to the Franchise Agreement set forth in this Amendment No. 1.

*Now therefore*, the parties agree as follows:

1. Section 1.1 of the Agreement is modified as follows:

The definition of “Service(s)” is modified as follows:

“Service(s),” “PCS Service(s),” or “Public Communications Structure Service(s)” means, individually and collectively, all work, goods, and services that the Franchisee is (i) obligated to provide under this Agreement or (ii) authorized to provide and in fact does provide under this Agreement.

2. Section 3.12 of the Agreement is modified such that subsection 3.12.1 is amended as below::

3.12.1 The Franchisee retains ownership rights in all data created in the course of providing the Wi-Fi Services and ancillary services contemplated in Part VII of Attachment SRV to the extent that such data doesn’t include Personally Identifiable Information, and subject to the requirements of subsection 4.4.4 of Attachment SRV. The Franchisee retains no ownership rights in Personally Identifiable Information.

3. Section 3.12.5 of the Agreement is modified as follows:

3.12.5 The Franchisee hereby grants the City a perpetual, unhindered, non-exclusive, irrevocable right to use any anonymized aggregated data created in the provision of the Wi-Fi Services or in connection with the ancillary services contemplated in Part VII of Attachment SRV. The ongoing irrevocable right to use such data — created at any time during the Term or any Holdover Period — is provided in exchange for the franchise granted to the Franchisee under this Agreement. The City will not have any rights to receive or use Personally Identifiable Information, subject to any exceptions in the Privacy Policy set forth in Exhibit 2 to this Agreement. For the avoidance of doubt, all data that the City has the right to receive pursuant to this Agreement will be entirely free to the City.

4. Part IV of Attachment SRV to the Agreement is modified such that the following new Section 4.6 is inserted:

**4.6 Gigabit Centers**

4.6.1 Subject to any required administrative, regulatory or other approvals, the Franchisee shall provide Wi-Fi Services at each of five facilities (“Gigabit Centers”). The Gigabit Centers will be designated by DoITT with input from the Franchisee, at the Commissioner’s discretion, for the purpose of furthering the goal that all New Yorkers have full access to the benefits of high-speed Internet connections, including the opportunity to incubate businesses, connect with communities, enhance educational experiences and develop innovative uses for LinkNYC. Additional Gigabit Centers beyond the initial five facilities may be selected by mutual agreement between the Franchisee and the Commissioner. Gigabit Centers may be any facility that offers technology training or other vital community service to the public, such as a library, computer resource center, computer lab, media arts center or community media center. Except as otherwise agreed by the Franchisee, each Gigabit Center will (i) be located on a street that is a Fiber route to at least one Structure (other than the Gigabit Center) and (ii) have existing conduit to a Zero Manhole on the Fiber route. The Franchisee may refuse the designation of a Gigabit Center in a location where there is no existing conduit, or other means available to bring fiber to the premises to provide Wi-Fi services to the Gigabit Center within a commercially reasonable expense, provided that the Franchisee demonstrates evidencereasonably acceptable to the Commissioner that (i) there is no conduit or other means, and (ii) placing conduit, or using other means, would not be commercially reasonable. All leasing and other arrangements with respect

to the Gigabit Centers shall be made by DoITT or the Gigabit Center’s host, and the Franchisee shall have no obligation to arrange for the availability or provisioning of facilities at any Gigabit Centers or to pay rent or other charges in respect thereof, it being understood that the sole obligation of the Franchisee in respect of the Gigabit Centers is the provision of Wi-Fi Services in accordance with this Section 4.6.

4.6.2 Wi-Fi Services will be provided throughout the premises of each Gigabit Center by bringing Fiber to the premises of the Gigabit Center, and by using such Wi-Fi Equipment and Fiber as is necessary to provide the Wi-Fi Services. For the purposes of this Section 4.6.2, the “premises” of each Gigabit Center shall be no more than one single floor, shall comprise no more than 5,000 square feet and shall require no more than 3 Wireless Access Points. Wi-Fi Services provided at each Gigabit Center shall comply with all provisions in this Agreement applicable to Wi-Fi Services provided at Structures that are subject to a minimum aggregate throughput requirement of 1 Gbps. Gigabit Centers are deemed to be Non-Advertising Structures for purposes of this Agreement, except that Wi-Fi Services provided at Gigabit Centers will not be subject to Exhibit 4, Exhibit 5 or to Sections 1.1.1, 1.1.2, 1.2, 3.1, 3.3, and 5.23 of Attachment SRV, or to Part 1 of Attachment RDR, and provided that the provisions of this Section take precedence over any conflicting provision in the Agreement with respect to Non-Advertising Structures.

4.6.3 The Franchisee shall provide the Wi-Fi Services to each Gigabit Center (i) no earlier than December 31, 2016 (provided, however, the Franchisee may in its sole discretion begin providing the Wi-Fi Services at Gigabit Centers designated under Section 4.6.1 before December 31, 2016), and (ii) no later than the date that is 120 days after the date on which such Gigabit Center is identified by DoITT with input from the Franchisee and on which Franchisee may legally access the Gigabit Center for the purpose of installing Wi-Fi Services. The Franchisee must complete deployment of the final of the initial five Gigabit Centers no later than October 31, 2017 (subject to Franchisee having legal access to each such Gigabit Center for the purpose of installing Wi-Fi Services). The Franchisee shall provide Wi-Fi Services at each of the first five Gigabit Centers at no charge for a period no less than five years for each Gigabit Center, which may be extended at the mutual agreement of the parties.

4.6.4 The Franchisee shall procure, design, implement, deploy, maintain and upgrade all of the Fiber, Wi-Fi Equipment and any other goods and services necessary to provide Wi-Fi Services at the Gigabit Centers in accordance with this Section 4.6, at its own cost and at no cost to the City or to the owners, tenants or other occupants of the facilities where the Gigabit Centers are located, at service levels that are consistent with those applicable under the Franchise Agreement to a Structure providing Wi-Fi Services with a total aggregate throughput of 1 Gbps. The Franchisee shall submit a project plan and a proposed responsibility matrix for each Gigabit Center for approval by DoITT and the Gigabit Center’s host, and the Gigabit Center host, the Franchisee and DoITT will work in good faith to agree in writing on each party’s obligations with respect to provisioning by the Franchisee of Wi-Fi Services at such Gigabit Center (e.g., physical access, power supply, insurance, coordination of installation and maintenance schedules with building rules, etc.) in accordance with this Section 4.6 and in accordance with industry custom and practice. DoITT and the Gigabit Center’s host will have responsibility for acceptance of the design and implementation of Gigabit Center Wi-Fi Services proposed by the Franchisee. Neither the project plan nor any other document will supersede any provision of the Agreement.

5. The Agreement is modified such that Attachment 1 to this Amendment No. 1 is added as “Exhibit 6 - MMS Specifications.”

6. Section 6.1.5 of Attachment SRV to the Agreement is deleted in its entirety and replaced with the following:

6.1.5 The MMS must provide, at minimum, the functionality, capabilities and data detailed in Exhibit 6. Exhibit 6 may be modified at DoITT’s reasonable discretion, in writing, so as to comply with the requirements of Section 6.1.1. Modifications to Exhibit 6 that add functionality or integration requirements do not require amendments to this Agreement. DoITT shall provide appropriate personnel to coordinate the creation of an interface between MMS and the 311 system.

7. Part IX of Attachment SRV is modified by numbering the paragraph under Section 9.2 as 9.2.1 and inserting the following new Section 9.2.2:

9.2.2 The report will also identify all free public Wi-Fi systems constructed, operated, maintained, or upgraded in whole or in part by the Franchisee or any Covered Related Party (as such term is defined in Section 9.3.1) anywhere in the world. For each system identified, the report shall include the date of Wi-Fi system activation and the date of the most recent upgrade to the system, if any, and shall include a description with system specifications sufficient to enable direct comparison of attributes such as Wi-Fi technology, functionality, operations, standards, resiliency, collocations, interoperability, advertising, Wi-Fi offloading or mass deployment of municipal free public Wi-Fi, between the system identified and the System that is operated and maintained under the terms of this Agreement.

Subsection 9.3.1 is modified as below:

9.3.1 The Franchisee shall perform a technology refresh and upgrade to each part of the System that is not State of the Art no later than the sixth (6th) and tenth (10th) Contract Years, in accordance with the plans described in Section 9.3.2. The technology refresh will include at a minimum an offer to use commercially reasonable measures to upgrade the System to the best that Franchisee or any Covered Related Party offers, in terms of Wi-Fi technology, functionality, operations, standards, resiliency, collocations, interoperability, advertising, Wi-Fi offloading or mass deployment of municipal free public Wi-Fi in any free public Wi-Fi system constructed, operated, maintained, or upgraded in whole or in part by the Franchisee or any Covered Related Party anywhere in the world. For purposes of this Part IX, the term “Covered Related Party” means (i) any direct or indirect subsidiary of Franchisee or (ii) any corporation, partnership or limited liability company that is wholly owned, directly or indirectly, by the Initial Members of the Franchisee or by the successors and assigns of the Initial Members of the Franchisee. Nothing in this Section 9.3.1 shall be interpreted to relieve the Franchisee, or any Covered Related Party, of the State of the Art requirement if the State of the Art at the time is superior to anything offered by the Franchisee and the listed related parties and any Covered Related Party. Performance of the second technology refresh and upgrade of the System is contingent upon the City extending the Agreement pursuant to Section 2.2 of the Franchise Agreement.

**Exhibit 6 - MMS Specifications**

This Exhibit 6 to the Agreement sets forth the minimum requirements of the MMS.

The MMS must provide, at a minimum, the following:

- Two-way information sharing between DoITT and the Franchisee for the recording and processing of complaints from the public and DoITT.
- Plotting of Public Communication Structures on maps, and Wi-Fi usage data for each Structure and in the aggregate.
- Color coding of Structures.
- Incident recording and reports, Gross Revenues by location, structure type, and the system as a whole, and advertising panels displaying NYC Program Advertising.
- Back-up maintenance and data protection protocols.
- A help menu function for assisting with MMS operation.
- Real-world Wi-Fi coverage range maps for each Structure, based on initial installation test results and updateable by readings from DoITT field inspectors. The maps shall be able to display this information on the level of detail ranging from an individual Structure to the entire System. Summaries of each coverage area or collective areas must appear in the executive dashboard to be designed by the Franchisee with input from DoITT.
- A system for DoITT field inspectors to capture inspection checklists, photographs, signal strength measurements, construction punch list items and other inspection items and transmit them from the field to a centralized location such as a summary bulletin board.
- Fiber mapping with the ability to display Fiber capacity, Fiber ownerships, Fiber leasing, dark Fiber, and other Fiber location and capacity information the Commissioner deems necessary to monitor the Fiber deployment to the Public Communication Structures, subject to Franchisee's obligations under the Agreement.
- Display of Gross Revenue produced by each PCS and by the System as a whole.
- A dashboard reporting function to track incidents that occur in the operation of each Structure and of the System, including:
  - Monitoring of the Wi-Fi access point in use at the Structures with specific monitoring review of operating frequencies, (i.e., 2.4, 5GHz and other operating frequencies as data is available);
  - Number of devices connected to each Structure, reported monthly; and
  - A date-range search function for retrieving these metrics and incidents according to the Franchisee data retention policy.
- Identification of any telecommunication service providers operating from a Structure, including the providers' primary use of the Structure, engineering specifications of equipment, and operating frequencies.

- The ability to describe the “load” of network consumption by large network saturation moments.
- Should Franchisee enter into roaming agreements with interoperable wireless Internet service providers, Franchisee will provide details of those agreements with DoITT including operator names, Wi-Fi standards, handoff and authentication details, and other relevant details specified by the Commissioner.
- Make available one or more application program interface (APIs) to allow for integration/interface with a DoITT-owned all-in-one database in order to archive the deployment, maintenance, operation, coverage, interoperability, construction details, photographs and other information specified by the Commissioner.
- Detail related to the conversion of old PPTs to Structures, including review and approval of proposed sites for Structures, review of construction drawings, Notices to Proceed, and process timeline.
- Data to which the City has exclusive rights or has been granted a license to use under the terms of the Agreement displayed on the executive dashboard to be designed by the Franchisee with input from DoITT.
- Reporting of calls from Link 911 emergency service from each Structure and from the System as a whole.
- Capacity for export of the data in the MMS in a standard, open format such as comma-separated values (CSV) or Keyhole Markup Language (KML).