

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU), dated December __, 2014, among the Department of Information Technology and Telecommunications (“DoITT”) and the Borough Presidents of the Bronx, Brooklyn, Queens, Staten Island and Manhattan, is intended to describe the public outreach and review process that will be undertaken in (A) seeking proposals for and evaluating sites (referred to hereinafter as “New Sites”) for structures to be installed pursuant to Section 1.2.1(iii) of Appendix SRV of the Public Communications Structures Franchise Agreement (“the Franchise Agreement”) between the City of New York and CityBridge, LLC, and (B) in exercising DoITT’s authority pursuant to the second sentence of Section 1.2.1(ii) of Appendix SRV of the Franchise regarding sites (“Upgrade Sites”) for structures to be installed pursuant to Section 1.2.1(ii).

A. Introduction.

The parties to this MOU recognize their mutual interest in assuring, and great desire to assure, that the structures to be sited pursuant to the Franchise are located in a manner consistent with the interests, wishes and concerns of the local communities where they will be placed. DoITT acknowledges and confirms its full intention to implement the above-referenced provisions of the Franchise in furtherance of that goal, and this MOU is to be interpreted in all respects in accordance with those goals and intentions. The Franchise Agreement will reflect the procedures described herein.

B. New Sites.

1. Prior to approving any New Sites, DoITT will first request recommendations and prioritized lists of areas and locations for New Sites from City Council Members, Borough Presidents, Community Boards and Business Improvement Districts (BIDs).

2. After reviewing recommendations and prioritized lists submitted pursuant to the preceding numbered paragraph 1, DoITT will then distribute lists of proposed New Sites for a 60-day comment period to Council Members, Borough Presidents, Community Boards and BIDs. Such lists of proposed New Sites will be prominently displayed on DoITT’s website, where the public will be invited to submit comments.

3. After consideration of comments received pursuant to the preceding numbered paragraph 2 from Council Members, Borough Presidents, Community Boards, BIDs and the public, DoITT will select final New Sites and notify Council Members, Borough Presidents, Community Boards and BIDs of such selections, as well as post such selections on DoITT’s website. Such final New Sites shall not include any site to which the Borough President within whose borough the applicable site lies has raised a specific objection, unless DoITT includes a written explanation of the criteria DoITT has used in proposing to select such site despite such objection and has provided an opportunity for the objecting Borough President to work with DoITT to develop an alternative location consistent with such criteria.

C. Upgrade Sites.

Section 1.2.1(ii) grants to DoITT the right to deny approval of any location for installation by the Franchisee of any new structure pursuant to the Franchise where an existing payphone is currently in place (or was in place as of April 30, 2014) “if DoITT approves an alternative location that in DoITT’s reasonable judgment is of at least equal economic value to the Franchisee”. In choosing whether to exercise that right to deny approval with respect to any applicable location and in approving alternative locations when exercising such right, DoITT commits to work with the Borough Presidents to assure that the interests, wishes and concerns of effected local communities are fully reflected, including, but not limited to, by pursuing the following steps:

Promptly after the execution of the Franchise Agreement, DoITT will distribute to each of the Borough Presidents and Community Boards a map or maps showing the locations of all existing sites covered by Section 1.2.1(ii). Thereafter, if a Borough President identifies to DoITT one or more such sites within his or her borough as a site to which he or she recommends DoITT apply the denial right described in the second sentence of Section 1.2.1(ii), and suggests as part of that request an alternative location that is likely to be a sufficient alternative under said second sentence of Section 1.2.1(ii), then DoITT shall submit such denial, and the proposed alternative site, to the Franchisee unless DoITT has substantial and important reasons not to do so, provides the Borough President in writing such reasons for not doing so, and provides the Borough President an opportunity to work with DoITT on identifying an alternative location consistent with the Franchise Agreement’s “equal economic value” standard. If a Borough President identifies to DoITT one or more such sites within his or her borough as a site to which he or she recommends DoITT apply the denial right described in the second sentence of Section 1.2.1(ii), but does not suggest as part of that request an alternative, then DoITT will use its best efforts to work with the Borough President to identify an alternative location that would meet the Franchise Agreement standard described at the end of the second sentence of Section 1.2.1(ii) of Appendix SRV of the Franchise Agreement.

D. Siting Criteria and Additional Provisions.

In seeking to identify an alternative site that meets the applicable standard reflected in the Franchise Agreement as described in Section C above, siting criteria to be used may include, without limitation:

- 1) area zoning,
- 2) proximity to mass transit,
- 3) width of the sidewalk,
- 4) pedestrian traffic at the location and other relevant nearby population density metrics,
- 5) significant residential or commercial developments reasonably believed to break ground in the succeeding six to twelve months from the date of site review,
- 6) the degree of expected usage of the services,

- 7) the presence of nearby locations where service users may congregate,
- 8) the availability of alternative free services at the location,
- 9) the availability of accessible infrastructure to support the services, and/or
- 10) the overall revenue potential and cost of installing and operating the structure at the alternative site.

In analyzing proposed New Sites as contemplated in Section B above, DoITT siting criteria may include, without limitation, the types of criteria listed above and the additional criteria expressly referred to in the Franchise Agreement at Section 1.2.1(iii) of Appendix SRV (the overall revenue generating potential of the location and the overall cost of installing and operating the structure at the location). The parties to this MOU acknowledge and agree that with respect to Upgrade Sites, it is generally intended that existing payphone locations should be reused so that existing conduit infrastructure is leveraged, disruption of the sidewalks is minimized and the franchisee can plan its rollout most effectively.

The public outreach and consultation steps described herein will be utilized with respect to both the location of sites generally and with respect to which locations will include 1 Gbps wireless access points and which will include 100 Mbps access points.

DoITT will provide a copy of each Site Plan submitted to DoITT pursuant to the Section 1.2.2 of Appendix SRV of the Franchise Agreement to the Borough President for the borough in which the applicable site lies and the affected Community Board.

The language set forth in the attachment to this MOU regarding a pilot program in the Bronx that will test the use of solar power for the planned franchise installations will be included in the Franchise Agreement.

The parties to this MOU will work cooperatively in exercising the steps and procedures described in this Section 2 in a reasonably expeditious manner consistent with the timely rollout of installations in accordance with the Franchise Agreement.

The steps described above in this MOU are not intended to be in any respect exclusive or exhaustive in describing the public outreach and community consultation and cooperation efforts DoITT will take with respect to siting and other implementation activities with respect to the Franchise. As noted above, it is an extremely high priority for DoITT that the location of the structures to be installed under the Franchise be desirable to and welcomed by local communities, and DoITT expects and commits to make every effort to work with local communities and elected officials to pursue that priority.

The parties to this MOU all agree that the LinkNYC system contemplated by the Franchise Agreement is just the beginning of an ambitious and far-reaching initiative that the parties to this MOU expect to continually improve over time. DoITT will give serious consideration to additional proposals recommended by the Borough Presidents that would enhance the services provided by LinkNYC without affecting or impairing the core functionality of the LinkNYC system or network. DoITT will consider such proposals in good faith and respond to the Borough Presidents on the merits and feasibility of such proposals, as well as the decision to implement, modify or reject such proposals.

The final Franchise Agreement language will reflect that there is no essential relationship between the presence of advertising panels on a new structure and the provision of a 1 Gbps wireless access point (WAP) at a new structure, such that it will be clear there will be four categories of new structures: structures with ad panels and a 1 Gbps WAP, structures without ad panels but with a 1 Gbps WAP, structures with ad panels and a 100 Mbps WAP, and structures without ad panels but with a 100 Mbps WAP. The final Franchise Agreement will also reflect an accelerated installation schedule and enhancement to 1 Gbps (as compared to the proposed Franchise Agreement draft) of 400 sites across the Bronx, Brooklyn, Queens, Staten Island and northern Manhattan.

Commissioner, DoITT

Borough President of the Bronx

Borough President of Brooklyn

Borough President of Queens

Borough President of Staten Island

Borough President of Manhattan

Attachment to MOU

PART VIII. SOLAR POWER PILOT PROGRAM

- 8.1 Beginning no later than 120 days after the first anniversary of the Effective Date, Franchisee will test the use of solar power on Structures in a pilot program that will include 10 Structures, in the Bronx (the "Solar Power Pilot Program"). The primary purpose of this program will be to ascertain how solar power can be incorporated into the design to improve performance during severe inclement weather, natural disaster and moments of distress.
- 8.2 Franchisee shall provide the funding, equipment, and services to perform this Solar Power Pilot Program for a minimum of one year, unless otherwise agreed.
- 8.3 Franchisee will consult with the Bronx Borough President to determine: (i) the location of the Structures to be included in the Solar Power Pilot Program; (ii) whether such Structures will be an Advertising Structure or Non-Advertising Structure; (iii) the throughput of the WAP of the Structures; and (iv) the build out schedule of the Structures that will comprise the Solar Power Pilot Program
- 8.4 Within a reasonable time after implementing the Solar Power Pilot Program, but no later than 365 days after the first anniversary of the Effective Date, Franchisee will produce a performance report on the pilot to be submitted to the City. and will regularly thereafter submit updated performance reports to the City.
- 8.5 Franchisee shall include a separate reporting capability within MMS for the Structures included in the Solar Power Pilot Program.
- 8.6 No later than 60 days after the anniversary of the Solar Power Pilot Program, Franchisee shall submit to DoITT a report on the findings of the Solar Power Pilot Program, and such report shall detail performance metrics of the battery and provision of the Services, an assessment of the costs associated with implementing, maintaining, and upgrading solar power equipment on the Structures, and an evaluation from the Franchisee on the feasibility of implementing solar power equipment for other portions of the System.
- 8.7 As may be needed to accommodate the solar equipment, during the pilot, subject to DoITT's approval, the envelope size of the Structures that are part of the pilot may exceed the dimensions listed in Section 1.1.2 of Attachment SRV.