

November 24, 2009

ACTION REQUIRED

To: The Board of Governors of Exhibition Place

From: Dianne Young
Chief Executive Officer

Subject: **Additional Seating at BMO Field**

Summary:

This report recommends that the Board approve the construction by Maple Leaf Sports & Entertainment Ltd. (MLSE) of additional seating (1,249 seats) at the north end of the stadium centered between the two corporate suite areas at a cost to MLSE of approximately \$1.972M. The additional seating would have the same look and be of the same quality as the existing seating and the intent would be to construct this seating in time for the opening of the 2010 season opener. In addition, approximately \$50,000 of these funds will be spent to do some interior cosmetic upgrades to the washrooms on the south side of the Food Building.

Recommendations:

It is recommended that the Board, subject to the approval of City Council, approve the construction by MLSE, at its sole cost and expense of approximately \$1.972M, of 1,249 additional seats at the north end of BMO Field and related upgrades to the Food Building ground level washrooms on the south side of the Food Building all in accordance with the terms and conditions as set out in this report and such other terms as satisfactory to the Chief Executive Officer and the City Solicitor, and that the additional seating and washroom improvements so constructed shall be the property of the City of Toronto and the seating shall be deemed to be part of the Stadium for the purposes of the current agreements between the Board, City and MLSE respecting the Stadium.

Financial Implications:

The entire cost of the proposed additional seating and Food Building washroom improvements shall be at the sole expense of MLSE with no cost to the City of Toronto or the Board. The additional seating at BMO Field will result in positive revenues for the stadium budget which revenues will be shared between MLSE, Exhibition Place and Toronto FC in accordance with the existing agreements between the Board/City and MLSE and Toronto FC. Accordingly, it is estimated that there will be an increase in Stadium revenues of \$70,000 with 50% paid to the Board and an estimated increase in parking revenues of \$18,000 for the Board's share.

Decision History:

At its meeting of October 2005, the Board approved of entering into a project (construction) agreement, a management agreement and facility usage agreements between the Board, the City and MLSE.

At its meeting of October 26, 27, 28 and 31, 2005, City Council approved of Clause No. 36 of Report No. 9 of the Policy & Finance Committee which basically adopted the report and recommendations of the Board. In accordance with the Council authority, the Board, City, MLSE (as manager) and MLSE (as owner of Toronto FC) entered into a Management Agreement and Team Licence Agreement with respect to BMO Field.

Issue Background:

Since opening BMO Field in 2007, the stadium has been at capacity for all Toronto FC games and any international games played on the field (ie Men's Under 18 FIFA, Real Madrid game) with thousands of fans on the waiting list for both season and game day tickets. With the replacement of the Field Turf field with natural grass, it is estimated that the public interest in attending Toronto FC and international games will only increase. There will also be a renewed marketing plan to have more international events and with the reality of the Pan Am Games in Toronto, the additional seating will definitely be a benefit.

Comments:

The existing Management Agreement between the Board, City and MLSE provides for specific terms and conditions for MLSE to manage the design and construction of all capital projects within BMO Field subject to approvals of the Board. This proposal for the additional seating was not part of the State-of-Good Repair Capital Plan but is "growth related" with 100% of the cost of design and construction being paid by MLSE. Attached is a preliminary design for this seating and construction budget. As the proposal is for MLSE to construct the seating entirely at its own expense, it falls outside of the relationship and budget process as contemplated in the Management Agreement and it was determined that a separate Council approval was required to authorize the construction as proposed.

Another part of the MLSE proposal is to pay for the cost of some upgrades to the Food Building ground level washrooms on the south side. Since opening BMO Field, MLSE has used these washrooms for all their games and pays for all costs associated with this use. Because it is likely that use of the Food Building washrooms will increase with the additional seating on the north part of the stadium, MLSE is suggesting that it would, in consultation with Exhibition Place and CNE staff, pay for some upgrades to these facilities which will be interior upgrades only without any increase or change in the structure of the washrooms.

The MLSE performance of the work would be subject to the following terms:

- (a) the design, plans and specifications as approved by Board

- (b) a construction schedule to be approved by the Board; and
- (c) the following general terms:
 - (i) MLSE shall, prior to commencing construction, obtain all necessary permits and approvals at its sole expense.
 - (ii) Union and trade association agreements for Exhibition Place shall apply to the construction work and MLSE shall ensure that all work is done in compliance with those agreements;
 - (iii) Representatives and consultants (if any) of the Board/City shall be entitled to regular periodic updates and reviews from MLSE as to material/significant matters during the pre-construction and construction process with reasonable access to the site and to all relevant plans, drawings, development documentation and other relevant materials. The Board/City shall promptly identify any concerns arising as a result of such updates and reviews.
 - (iv) MLSE shall comply with the holdback provisions of the *Construction Lien Act* and shall forthwith cause any such liens to be removed. MLSE shall indemnify the Board and the City of Toronto against any and all claims, loss, costs and expenses as a result of any lien or claims for lien.
 - (v) MLSE shall ensure that performance bonds, labour and materials bonds and construction period insurance have been provided or arranged to the satisfaction of the City's Manager of Insurance and Risk Management.
 - (vi) Substantial completion shall be in accordance with the substantial performance requirements of the *Construction Lien Act* in time to allow the use of the seating and washrooms for the 2010 soccer season (provided that MLSE shall have no liability to the Board/City for its failure to achieve substantial completion by the date stipulated herein, to the extent that such failure is directly attributable to the inability of MLSE to obtain all necessary permits and approvals solely as the result of unreasonable delays in the processing of such permits or approvals.).
 - (vii) MLSE shall ensure that all third party agreements for the construction and related services contain the usual events of defaults and remedies, including termination.
 - (viii) MLSE shall ensure that all principal construction and consulting agreements entered into by MLSE shall permit the Board/City to assume MLSE's position if the Management Agreement is terminated.
 - (ix) MLSE shall be responsible, at its expense, for the repair or restoration of any damage or other disturbance to the Soccer Stadium or Exhibition Place as a result of the construction work and MLSE shall indemnify and hold harmless the Board, the City of Toronto, and their respective elected officials, directors, officers, agents and employees from and against any and all losses, claims, liability, damage, action or expense (including without limitation, costs and legal fees) arising out of or relating in any way to the negligence or wilful misconduct of MLSE in the performance of the construction work.
 - (x) Such other terms as may be required by the Chief Executive Officer and the City Solicitor.

The seating and the washroom improvements shall, upon completion, become the property of the City of Toronto and the seating shall be deemed to be part of the Stadium for the purposes of the current Management Agreement and Team Licence and User Agreement between the Board, the City and MLSE.