

May 26, 2009

ACTION REQUIRED

To: The Board of Governors of Exhibition Place

From: Dianne Young
Chief Executive Officer

Subject: **Agreement for the Existing Strachan Outdoor Billboard Sign – Clarity Outdoor Media Inc.**

Summary:

This report recommends the Board enter into a 15-year licence agreement with Clarity Outdoor Media Inc. (“Clarity”) as the Preferred Proponent for the operation of an existing outdoor billboard sign.

In 1999 the Board entered into an agreement with Gallop & Gallop Advertising Inc for the construction, operation and maintenance of a pillar billboard structure on the south side of the Gardiner Expressway near Strachan Avenue (the Strachan Billboard), which is set to expire on August 31, 2009. This Agreement was subsequently assigned to Mediacom Inc which company was subsequently purchased by CBS Outdoor Ltd, (“CBS”). The current agreement provides either party with the option to request an opportunity to attempt to negotiate an extension of the current agreement before the Board may pursue its option to purchase the sign and re-tender the opportunity to the market. Pursuant to the agreement, the Board gave notice to CBS to commence negotiations to renew. The financial proposal received from CBS did not meet with staff expectations given the location and the value of the sign asset.

The Request for Proposals (RFP) issued called for a qualified outdoor billboard operator to purchase, operate and maintain the existing Strachan Billboard for a period of 15 years commencing September 1, 2009 and was released through the City of Toronto Purchasing Division on March 27, 2009. Proposals were received from three companies: Clarity Outdoor Media Inc, CBS Outdoor Ltd and Pattison Outdoor Advertising. The Clarity offer being recommended to the Board meets or exceeds all key market values as set out in the assessment by the Board’s consultant, Allvision Canada Company (“Allvision”).

The existing sign is a permitted sign under City by-laws and this report does not constitute regulatory approval of any changes or enhancements to the sign.

Recommendations:

It is recommended that the Board, subject to approval by City Council:

- 1. Enter in an agreement with Clarity Outdoor Media Inc on the terms and conditions outlined in this report and the Confidential Attachment I and such other terms and conditions as may be satisfactory to the Chief Executive Officer of the Board and the City Solicitor; and,**

2. Direct that the confidential information in Attachment 1 not be released publicly in order to protect the competitive position and the future economic interests of Exhibition Place

Financial Impact:

Approval of the agreement between the Board and Clarity will result in a positive income stream to the Board as detailed in Confidential Attachment 1.

Decision History:

At its meeting of January 29, 1999, the Board approved of entering into an agreement with Gallop & Gallop Advertising Inc. for the construction, operation and maintenance of a pillar billboard structure on the south side of the Gardiner Expressway near Strachan Avenue (the Strachan Billboard) which report was subsequently approved by City Council at its meeting of May 11 and 12, 1999.

Subsequently, the Board approved of an assignment of this agreement to Mediacom Inc which was then purchased by CBS Outdoor Ltd.

At its meeting of June 20, 2008, the Board approved of entering into an agreement with Allvision for the provision of outdoor signage consulting services given the expiration of the CBS agreement on August 31, 2009.

Issue Background:

The CBS agreement is set to expire on August 31, 2009. The agreement provided for a possible extension at the expiration of the term subject to renegotiation of the terms and conditions. Exhibition Place staff, in consultation with its consultant, Allvision, entered into negotiations with CBS for an extension of the agreement for either a ten (10) year or a fifteen (15) year term. The financial proposal received from CBS did not meet with expectations given the location and the value of the sign asset. Exhibition Place was not prepared to accept an offer which only maintained the existing revenue stream but wanted to obtain a significant increase given that CBS has fully amortized its initial capital investment and received a reasonable return on that investment.

Comments:

In 1999 the Board entered into a 9-year agreement with Gallop & Gallop Advertising Inc for the construction, operation and maintenance of a pillar billboard structure located at Exhibition Place on the south side of the Gardiner Expressway near Strachan Avenue and the General Services building. This Agreement was subsequently assigned to Mediacom Inc. which company was subsequently purchased by CBS Outdoor Ltd. The existing CBS sign (as shown in “Appendices A and B”) is a Double-sided Vee-shaped outdoor sign which has the following components on each side:

- a) East facing is comprised of an Electronic Message Centre, Trivision, and Static Vinyl
- b) West facing is comprised of an Electronic Message Centre and Static Vinyl

Given the impending expiration of this agreement and the special nature of the billboard industry, following approval from the Board, Exhibition Place engaged an industry consultant,

Allvision to provide expert advice to the Board, assist Exhibition Place with its negotiations with CBS and, if required, assist staff to draft a request for proposals document.

The current CBS agreement provided either party with the option to request an opportunity to attempt to negotiate an extension of the current agreement before the Board may pursue its option to purchase the sign and re-tender the opportunity to the market. Pursuant to the agreement, the Board gave notice to CBS to commence negotiations. However, the financial proposal received from CBS did not meet with staff expectations given the location and the value of the sign asset.

The Request for Proposals (RFP) requesting proposals from qualified outdoor billboard operators to purchase, operate and maintain the existing Sign at Exhibition Place for a period of fifteen years commencing September 1, 2009 was released through the City of Toronto Purchasing Division on March 27, 2009. Proposals were received from three companies, Clarity Outdoor Media Inc, CBS Outdoor Canada and Pattison Outdoor Advertising.

The evaluation team consisted of Arlene Campbell, General Manager – Sales and Events; Hardat Persaud, CFO; Eva Pyatt, City of Toronto Director, Business Development, Economic Development, Culture and Tourism; and Gerd Rose, Purchasing Manager with Allvision as advisor. The evaluation criteria were as set out in detail in the RFP and included ratings for experience and qualifications; proposed fees; and other benefits to the Board. Upon initial evaluation, the proposal received from CBS Outdoor Canada was declared non-compliant by the City and removed from consideration. This was communicated in writing to CBS Outdoor Canada by the City on April 28, 2009.

On a basis of its review, the evaluation team recommends Clarity as the “Preferred Proponent” under the RFP. The proposal from Clarity offers the Board the opportunity to generate revenues from two streams: first, revenues based on an up-front lump sum payment predicated on future cash flows taking into consideration the value of the asset; and secondly, revenues from annual rent from the long term lease.

Clarity is a privately held Ontario corporation specializing in the sale of outdoor advertising. Clarity was formed as a sister company to Tribar Industries Inc. in 2008 and Clarity and Tribar Industries have identical ownership structures and shareholders. Tribar Industries originally formed in the 1960’s as a technology company focusing on the development and manufacture of various indoor and outdoor LED signage products, successfully expanded over the last decade to operate a network of company owned digital signs on a number of different sign locations. This business component was transferred from Tribar in 2008 to Clarity. It should be noted that Clarity has been responsible for the full operation of the east facing sign face of the Strachan Billboard since 2000 as a subcontractor to the current operator CBS and therefore has significant experience in marketing this sign.

Clarity’s environmental initiatives include expanding the use of energy efficient LEDs in signage as a means of replacing inefficient incandescent electronic message displays and in keeping with the City policy Clarity will be replacing all incandescent lights with LEDs on the Exhibition Place sign thus reducing the environmental footprint in the delivery of the advertising.

Prior to commencing negotiations with CBS and going to the marketplace, Allvision performed an analysis of market/trends/projections for billboards in Canada in general, and along the

Gardiner corridor in particular. Based on the Allvision assessment, the Clarity offer proposed in this report either meets or exceeds all key market values.

In addition to the financial terms and condition set out in the Confidential Attachment, the substantial terms and conditions of the proposed agreement are as follows:

- a) Length of Licence Term: Fifteen (15) years with no further renewal of the Term commencing on September 1, 2009 (the “Commencement Date”);
- b) Sign Components: The components of the sign will be exactly the same as the existing sign, comprised of electronic display, tri-vision and vinyl on the east side as shown in Appendix “A” and on the west side an electronic display and static sign as shown on Appendix “B”;
- c) Free Advertising: During the Term Clarity shall continue to provide 10% of the available airtime on the east face of the Sign; Clarity will provide all electronic messaging and ad scheduling and file delivery processing at no charge to the Board; Clarity will provide free graphics art and creative services and is responsible for getting all creative ready to go to air. The purpose of the advertising shall be limited to purposes of the Board and the City of Toronto and its agencies, boards and commissions and shall include, with the approval of Clarity acting reasonably, advertising for the purpose of tenants, licensees or sponsors of Exhibition Place provided that these tenants are not regular outdoor advertisers of the proposed advertisement;
- d) Message Board: Based on the existing configuration of the sign, Clarity shall provide Exhibition Place or its sponsors/tenants, at no charge, with full creative services and message scheduling at no charge;
- e) Limitation on Sale of Advertising by Clarity: Clarity agrees that advertising on the sign shall not be made available to competitors of the Board’s major events held either at Exhibition Place, in the Direct Energy Centre and in the Allstream Centre during the time period of the major event and in the period 15 days prior to the major event. Major events include but are limited to: the Canadian National Exhibition, Royal Agricultural Winter Fair, Honda Indy and the CHIN Picnic;
- f) Ownership of Sign: Throughout the Term, Clarity shall be the owner of the Sign. At the end of the Term, all title, right and interest in the Sign shall be deemed to be transferred to the Board without cost or compensation and Clarity shall ensure that such transfer is free of any claims or liens arising or related to the use of the Sign during the Term.
- g) Assignment: Clarity shall not assign the agreement without the consent in writing of the Board which shall not be unreasonably withheld provided that Clarity shall remain jointly and severally liable with any permitted assignee with respect to the performance of all the terms and conditions. A change in corporate ownership or control of Clarity shall be deemed to be an assignment under this agreement;
- h) Union Obligations: Clarity shall comply with all trade union/ association agreements affecting work done on the grounds;
- i) Indemnity/Insurance: Clarity shall indemnify the Board and the City of Toronto with respect to any and all expenses, costs or claims as a result of Clarity’s exercise of its rights under the agreement or use of the grounds. Clarity shall provide sufficient insurance in such form and amount as required by the CEO, in consultation with the City’s Insurance & Risk Management Group;
- j) Annual Statements: within 30 days following the end of each Contract Year, Clarity shall deliver to the Board a statement showing the computation of the annual fee and any additional fees payable. Statements shall be verified by an independent licensed accountant within 90 days following end of the contract year verifying the initial statements and any adjustments required. The Board shall have the right of reasonable access by its own auditor

to Clarity's books to verify Clarity's obligations during the Term and up to six (6) years after the expiration of the Term;

- k) Clarity shall upon execution of the agreement, provide performance security as required by the CEO;
- l) Board's Rights to Purchase Advertising Exposures: Clarity grants the Board the right to purchase, at competitive rates, the right to advertise on all sides of the Sign
- m) Environmental Standards: Clarity shall, at all times, in the maintenance, operation and any future upgrades of the Sign, comply with all the environmental standards as established by the Board and the Council of the City of Toronto;
- n) General Obligations:
 - i. Clarity should be responsible for operating and maintaining the Sign and for paying all costs thereby incurred.
 - ii. Clarity shall be responsible for securing advertisers for the Advertising Panel and for paying for all costs, including commissions, thereby incurred
 - iii. Clarity shall be responsible for all Taxes and Impositions, including any realty taxes which may arise out of the operation of the sign.
 - iv. Clarity shall be responsible for the cost of electricity used in connection with the Sign
 - v. Clarity shall be responsible for the remote control of the Message Centre which will be located in Claritys' offices
 - vi. Clarity shall comply with advertising guidelines established by the Board and as set out in the RFP
 - vii. Clarity shall fully replace the technology on each face at least once during the 15 year term so that the offering will always be superior and reflect the most current technology available at time of installation.

In addition to the financial terms and condition set out in the Confidential Attachment, all terms and conditions contained within the current CBS Agreement dated August 1, 2000 shall remain substantially the same unless otherwise noted above.

Contact:

Hardat Persaud, CFO

Tel: 416 -263-3031

Fax: 416-263-3690

Email: HPersaud@explace.on.ca

Dianne Young, CEO

Appendix "A"
Components of the Existing Sign
East facing side



Appendix "B"
Components of the Sign
West facing side

