

July 7, 2010

ACTION REQUIRED

To: The Board of Governors of Exhibition Place

From: Dianne Young, Chief Executive Officer

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

Summary:

This report recommends the approval of amended terms to finalize an agreement with Clarity Outdoor Media Inc. ("Clarity") related to the operation of an existing Gardiner outdoor billboard sign at Strachan Avenue. As detailed below, these amended terms were negotiated and finalized with Clarity following the Council approvals in August 2009 and January 2010 and basically focus on the financial terms of the contract and reflect the financial return on investment in this industry.

On March 27, 2009, a Request for Proposals (RFP) was released through the City of Toronto Purchasing Division that 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. Qualified proposals were received from Clarity and Pattison Outdoor Advertising ("Pattison").

At its meeting of May 29, 2009 and August 5 and 6, 2009, the Board and City Council respectively, approved the Board entering into an agreement with Clarity for the purchase and operation of the existing outdoor billboard sign located at Strachan Avenue and the Gardiner expressway as the successful bidder.

Negotiations to finalize the agreement with Clarity were very difficult and ongoing since August 2009 and have resulted in amendments approved at the Board meeting of December 4, 2009 and Council meeting January 26 and 27, 2010.

Despite approval of the requested change in the payment dates, Clarity has been unable to obtain financing and finalize the agreement on the terms proposed and following receipt of advice from City Legal, Exhibition Place on a without prejudice basis approached both Clarity and Pattison Outdoor Advertising which proposals have been reviewed by the Board's consultant, Allvision Canada Company ("Allvision"). Allvision is recommending that the Board enter an agreement with Clarity on the basis that it has proposed the best financial package as detailed in the chart on the last page of the Confidential Attachment. Given the past and existing negotiations with Clarity, Exhibition Place has insisted that Clarity execute the Agreement and provide a deposit which has now been completed.

Recommendations:

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

- 1) Approve the finalization and entering into of the previously approved agreement with Clarity Outdoor Media Inc. including the terms and conditions as contained in this report and the attached Confidential Attachment 1 and such other terms and conditions as may be satisfactory to the Chief Executive Officer and City Solicitor;**

- 2) **Direct that the confidential information in Confidential Attachment 1 not be released publicly as it concerns the security of the property of the Board and the City and contains advice subject to solicitor-client privilege in contemplation of litigation or potential litigation; and,**
- 3) **Request that the Exhibition Place CEO write a briefing note to accompany this report at the City Executive Committee and City Council to outline the reasons for the amendments to this matter following the previous approvals given by City Council.**

Financial Impact:

Approval of the agreement between the Board and Clarity on the amended terms as set out in this report will have a negative financial impact to the Board in 2010 as detailed in Confidential Attachment 1 as the budget assumed an additional revenue stream commencing from September 2009 based on Clarity's initial proposal as accepted by the Board and City Council. However, Exhibition Place staff have initiated directions to minimize the negative financial impacts.

Decision History:

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.

At its meeting of May 29, 2009 the Board approved of Clarity as the successful proponent of the Billboard Sign (Strachan) RFP which was issued through the City of Toronto Purchasing Department and approved of the terms and conditions of the long-term agreement with Clarity which was subsequently approved by City of Toronto Council on August 5, 2009.

At its subsequent meeting of December 4 2009, the Board approved an amendment to the agreement as originally approved regarding the payment schedule as requested by Clarity which was subsequently approved by City of Toronto Council on January 26, 2010.

As part of its 2009 Strategic Plan, the Board approved of a Financial Goal to *Maximize a positive operating financial performance across Exhibition Place and all of its businesses.*

Issue Background:

A Request for Proposals (RFP) was released through the City of Toronto Purchasing Division on March 27, 2009 and called for a qualified outdoor billboard operator to purchase, operate and maintain the existing Strachan Billboard Sign for a period of 15 years commencing September 1, 2009. Qualified proposals were received from Clarity and Pattison, with the Clarity offer being recommended to the Board as the best financial proposal received.

Despite the approval by the Board and City Council of amendments to the agreement as requested by Clarity, Clarity has been unable to finalize the agreement on the initial terms proposed by it and accepted by the Board and City Council. Accordingly, rather than terminating negotiations at this time, staff asked its consultant Allvision to approach Clarity and Pattison on a without prejudice basis to submit its best offer for consideration by the Board.

Comments:

In addition to the financial terms and condition set out in the Confidential Attachment 1, the substantial terms and conditions of the previously approved agreement are as follows:

- a) Length of Licence Term: Fifteen (15) years with no further renewal of the Term commencing on July 1, 2010 (the “Commencement Date”);
- b) The components of the sign will continue exactly the same as the existing sign (of electronic display, tri-vision and vinyl on east side) except that Clarity intends to re-configure and enhance the west face of the Sign by replacing the existing electronic message centre with a newer more energy efficient LED screen and trivision equipment as shown in “Appendix B”. The configuration options are all designed to fit within existing City Sign By-Law requirements. The distinct advantage of the “enhanced” scenario is the capability to deliver more complete messaging combined with the impact of full colour. It is a dramatically more impactful messaging system than old technology scrolling text message systems. In addition, different creative executions supporting different events can be played and scheduled simultaneously on the different sides of the Sign
- 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 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. In the event the “enhanced” configuration is chosen, in lieu of the messaging on the electronic reader board (which is not present in “enhanced configuration”), Clarity will offer 10% of available airtime on the west face of the sign to the Board in addition to the 10% of available airtime on the east face and will continue to provide full creative services on both sides.
- 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 (with the exception of the display faces and equipment) shall be deemed to be transferred to the Board without cost 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 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 and any additional fees payable. Statements shall be verified by a 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) 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
- l) 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;
- m) General Obligations:
 - i. Clarity shall 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 Clarity's' 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.

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