



# Exhibition Place

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## Item No. 24

April 26, 2011

To: Board of Governors of Exhibition Place

**ACTION REQUIRED**

From: Dianne Young, Chief Executive Officer

Subject: **Community Basketball Courts**

### Summary:

In 2009, Exhibition Place staff was approached by Zlatko Starkowski, principal of Muzik Clubs Inc. (“Muzik”) who is the Board’s tenant in the Horticulture Building operating as Muzik Nightclub regarding their wish to participate in the upgrading of the community basketball courts located in Centennial Square. Muzik offered to contribute to the cost of the renovation and maintenance of the courts and to program basketball events for the local community such as coaching and player clinics; community events; and special fundraisers to encourage greater participation in the community use of the basketball courts. All the work on the community basketball courts has now been completed at a cost of \$5,500 paid by Muzik and \$400 paid by Exhibition Place. This report is recommending that the Board enter an agreement with Muzik outlining the specific terms and conditions of Muzik’s right to use this area for organized community events for basketball.

### **Recommendations:**

**It is recommended that the Board approve entering into a License Agreement with Muzik for the Community Basketball Courts substantially on the terms and conditions contained in this report and such other terms and conditions satisfactory to the Board’s Chief Executive Officer and the City Solicitor.**

### Financial Implications:

The work already done by Muzik to improve the Community Basketball Courts was a positive benefit of \$5,500 to the Board.

### Decision History:

At its meeting of April 25, 2003, the Board approved of entering into a long-term lease with Muzik commencing February 2005 for the operation of the Horticulture Building as a nightclub and concert facility venue.

### Issue Background:

As part of its 2009 Strategic Plan, the Board’s Infrastructure Goal aims to *enhance and sustain our dynamic and diverse public assets and integrate these assets with the surrounding urban fabric.*

Exhibition Place has provided basketball courts for the local community for at least 13 years following a request from the Parkdale community. At first, these courts consisted only of some basketball standards located in the parking lot to the east of Liberty Grand, but in 2001 a new improved format was developed in the asphalt area beside Centennial Park and closer to the Parkdale community. While Exhibition Place provided minimal maintenance of this area over the years, the financial commitment undertaken by Muzik in the Spring 2010 was in excess of normal annual expenditures made by Exhibition Place and has developed and upgraded this community area. The terms of the proposed licence agreement with Muzik would also continue to elevate the activity on these courts to the benefit of the local community.

Comments:

In 2009, staff was approached by Zlatko Starkowski, principal of Muzik regarding their wish to have the community basketball courts located in Centennial Square renovated for improved community use. Muzik offered to contribute to the cost of the renovation and maintenance of the courts and to program basketball events for the local community such as coaching and player clinics; community events; and special fundraisers to encourage greater participation in the community use of the basketball courts.

The proposed terms of the Licence agreement attached as Schedule “A” acknowledges that this area is used for community basketball each year from April 1 to October 31 subject to protection for the Board’s existing events such as the CNE, the Honda Indy and for existing and / or future festivals allows Muzik to develop community basketball programming for approximately 15 days each year; and allows Muzik the right to seek sponsorships in support of that programming.

The agreement also sets out the obligations of Exhibition Place to continue with its general maintenance of the area (cleaning, line painting and security) and obligates Muzik for the initial cost and future upkeep of any improvements to the basketball courts. The City Solicitor has reviewed the proposed agreement and is satisfied with its terms and conditions (eg. insurance, indemnities, assignment) for the protection of the Board.

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Submitted by:

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Dianne Young  
Chief Executive Officer

## Appendix "A"

## Substantial Terms and Condition of the Licence

1. Term: The Term of the Agreement shall be three (3) years commencing on September 10, 2010 or later as mutually agreed upon.
2. Upgrades: The Licensee shall, at its sole cost and expense, carry out the following one-time renovations to the Basketball Courts:
  - a) Repair or replace, if required, the existing 8 basketball poles, backboards and hoops;
  - b) Repair or replace, if required, the broken mounting collars; and,
  - c) Resurface the existing asphalt pavement and paint the court lines.
3. Signage: The Board, at its cost and expense will supply and erect a sign, similar in size and location to the existing sign, acknowledging the Licensee's contribution to the Basketball Courts. The Board will work cooperatively with the Licensee on the design, wording and placement of this sign.
4. Licensee's Maintenance/Repairs: Subject to the repair obligations of the Board in paragraph 5, the Licensee shall, at its sole expense, be responsible for maintaining the Basketball Courts in good condition, subject to reasonable wear and tear, save and except for damage by fire, lightning, tempest, Act of God or other matter for which the Board is insured or ought to be insured.
5. Board's Maintenance: The Board will be responsible, at its sole expense, for the cleaning, sweeping, power washing and security for the Basketball Courts and repainting the lines on the Basketball Courts as such repainting may be required from time to time as a result of the community use of the Basketball Courts as set out in paragraph 6 below. The Board will also be responsible for the cost of all structural repairs to the asphalt slab and for repairs of any damage caused by the Board's use of the Basketball Courts for events such as, but not limited to, the Honda Toronto Indy event and the Canadian National Exhibition. The Licensee agrees that maintenance and repair work done by the Board under this paragraph shall be done to the same standard as the rest of Exhibition Place.
6. Community / Event Use: The Board and Licensee acknowledge and agree that the main purpose of the Basketball Courts for the period from April 1 to October 31 is to be for community use. The Board will continue to be responsible for the general community use of the Basketball Courts and the costs associated therewith. However the parties agree that the Basketball Courts will be closed to community use due to the following activities:
  - (i) Move-in, move-out and event days for the annual CNE;
  - (ii) Event days for the Toronto Honda Indy
  - (iii) Festivals;
  - (iv) Saturday 8pm to Sunday 8am for Parking; and
  - (v) Other one time Exhibition Place special events that may occur from time to time.
7. Other Use: Subject to the Board's right to close the Basketball Courts as set out in Paragraph 6 (i) – (v), the Licensee will have the right to use the Basketball Courts for up to fifteen (15) days of the year, on a nominal rent basis (i.e. \$2.00), to program basketball events for the local community such as coaching and player clinics; sponsored community events; and special fundraisers to encourage greater participation in the community use of the Basketball Courts (the "Special Community Events"). Such dates for Special Community Events shall be mutually agreed to by the parties and the Licensee shall ensure that notice of the use of the Courts for these purposes is posted for the information of the local community at least 48 hours in advance of the date of such use.
8. License Agreement: An event license agreement for each Special Community Event shall be negotiated and executed in advance of such event containing terms and conditions as agreed to by the parties, acting reasonably and in good faith. Proof of Insurance as required under section 10 below shall also be provided by the Licensee to the Board prior to each

Special Community Event.

9. Sponsorship of Event: The Board shall permit the Licensee to undertake a fundraising and sponsorship program strictly limited to the Licensee's Special Community Events on the Basketball Courts provided that the Licensee shall not enter into any sponsorship arrangement which conflicts with any exclusive sponsorship and advertising arrangement for Exhibition Place entered into by the Board, including all naming and signage rights. The Licensee shall be permitted to sell rights for signage to be displayed at the Basketball Courts during the Special Community Events. Money raised through fundraising and sponsorship events shall be first used to fund special Community Events and thereafter will be paid over to not-for-profit community organization whose objects are to foster the playing of basketball in the immediate community surrounding Exhibition Place.
10. Indemnity/Insurance:
- (i) The Licensee indemnifies, holds harmless and defends the Board, its elected and appointed officials, employees, officers and agents, from and against any and all losses, claims, liability, damage, action, or expense (including, without limitation, costs and legal fees brought or suffered by any person, including the Licensee) arising out of or relating to (i) Licensee's use of the Basketball Courts for Special Community Events (ii) any breach or default in the performance of any obligation of Licensee under this Letter Agreement, and (ii) any negligence or willful misconduct of Licensee or any of its agents, employees, contractors, invitees, attendees, patrons and guests with respect to the renovation and maintenance of the Basketball Courts by the Licensee as contemplated under this Agreement or the Special Community Events.
- (ii) For each Special Community Event the Licensee shall provide proof of comprehensive general liability coverage in the amount of Five Million Dollars (\$5,000,000) of Combined Single Limit Coverage to include: Comprehensive Form, Premises/Operations, Contractual, Broad Form Property Damage and Products/Completed Operation, which is issued by an insurance company authorized by law to carry on business in the Province of Ontario and which is in a form acceptable to the Licensor. The term of such occurrence based coverage shall be for the duration of each Special Community Event. Such insurance shall specifically include the Licensor, City of Toronto, Canadian National Exhibition Association, and their respective directors, officers and employees (collectively the "Indemnitees"), as additional insureds, and contain a cross-liability clause and non-owned automobile liability clause.
11. Other: The Licensee acknowledges and agrees that:
- (i) No assignment of this Letter Agreement or the rights thereunder shall be permitted.
- (ii) The Licensee shall abide by all the terms and conditions of the Board's collective agreements with respect to any work to be undertaken on the Basketball Courts under this Licence including Schedule "B".

Schedule "B"  
Initial Project Work

Work	Responsibility for Costs	Performed by
Refurbish backboards, nets & sleeves (Section 2)	Muzik	Muzik contractor
Application of Surface Sealer (Section 2)	Muzik	Muzik contractor
Repainting of Court lines (Section 2)	Muzik	Exhibition Place painters (At Muzik's expense)
Sign Production (section 3)	Exhibition Place	Exhibition Place
Investigation/Installation of Lighting (To be negotiated)	To be negotiated and agreed by the parties, acting reasonably.	To be negotiated and agreed by the parties, acting reasonably.