



Exhibition Place

Item No. 21

ACTION REQUIRED

May 14, 2014

To: The Board of Governors of Exhibition Place

From: Dianne Young
Chief Executive Officer

Subject: **2 Strachan Avenue Billboard Sign**
Assignment of Agreement with Clarity Outdoor Media Inc. ("Clarity")

Summary:

Clarity and the Board entered into an Agreement dated July 1, 2010 (the "Agreement") for a long-term lease of the billboard sign located at 2 Strachan (the "Sign") to Clarity for a term of 15 years. Section 14 of that Agreement allows Clarity the right of assignment of the Agreement and Clarity has requested such an assignment to Cieslok Media Ltd. ("Cieslok"). This report reviews the business and financial information of Cieslok and recommends approval of the assignment under certain terms and conditions.

Recommendations:

It is recommended that the Board:

- 1) Approve the assignment of the Agreement from Clarity to Cieslok in accordance with the terms and conditions set out in the Confidential Attachment I and such other terms and conditions required by the City Solicitor and the CEO of Exhibition Place; and**
- 2) Direct that the confidential information contained in Confidential Attachment 1 to this report remain confidential in its entirety and not be released publicly as it concerns litigation or potential litigation affecting the Board or the security of the property of the Board.**

Financial Implications:

See the potential financial implications set out in Confidential Attachment I.

Decision History:

At its meeting of May 29, 2009, the Board approved entering into a 15-year agreement with Clarity for the operation and maintenance of the existing double-sided billboard sign, which agreement was approved by City Council at its meeting of August 5, 2009.

At its meeting of January 26, 2010, Council approved of amendments to the terms of the arrangement with Clarity related to the schedule for payments.

At its meeting of August 25, 2010, Council approved of further amendments to the previously approved terms and conditions of the arrangement with Clarity related to the financial terms.

At its meeting of May 25, 2012, the Board approved of amendments to the Agreement to permit upgrades to the east and west side of the sign subject to City requirements, including in respect of Municipal Code Chapter 694 Signs, General, which contractual amendments were approved by City Council at its meeting of July 11, 2012.

At its meeting of October 2, 2012, City Council adopted PG17.2 to enact a site specific by-law amendment to Chapter 694 to permit the replacement of one of the east facing sign faces from static copy with mechanical sign copy (tri-vision). The City enacted By-law 1640-2012.

At its meeting of May 24, 2013, the Board received the report titled 2 Strachan Avenue Sign - Agreement with Clarity Outdoor Media Inc. ("Clarity") dated May 14, 2013 from the Chief Executive Officer, which report was forwarded by the Board to the City's Planning and Growth Management Committee for the information of the Committee.

At its meeting of June 20, 2013, the City's Planning and Growth Management Committee considered PG25.3 in respect of Clarity's application for a site specific by-law amendment to Chapter 694 to permit a reconfiguration of the west facing side of the sign, from the existing two sign faces, one vinyl and one electronic readograph, to three sign faces, two displaying mechanical copy (tri-vision), and one displaying electronic static copy. This report will be considered by City Council at its meeting of July 16, 2013.

At its meetings of May 24, 2013 and July 5, 2013, the Board received information from Exhibition Place staff on outstanding matters relating to Clarity and the City of Toronto violations issued respecting the Sign.

Comments:

Sections 14.1 and 14.2 of the Agreement provides for a right of assignment, the pertinent parts read as follows:

"14.1 This Agreement shall not be assigned by the Company without the prior consent in writing of the Board. The consent of the Board shall not be unreasonably withheld, delayed or subject to any fee. ... It shall be unreasonable for the Board to withhold its consent where the proposed assignee is a media company with the financial wherewithal, reputation and creditworthiness required to fulfill the obligations of the Company under the Agreement.

14.2 Any consent by the Board will be subject to the Assignee signing an agreement with the Board providing that the Assignee will be bound under the Agreement as if it had originally executed it as the Company. Notwithstanding any assignment the Company shall remain jointly and severally liable with any permitted assignee with respect to the performance of all the terms and conditions of this Agreement for the balance of the Term, excluding any renewals or extensions thereof."

Cieslok is a major outdoor advertising firm, operating predominately large format digital and static billboards throughout major cities in Canada. It is an Ontario corporation owned by senior management and a private equity group, Clairvest Group. Clairvest Group is a Toronto-based private equity management firm founded in 1987 with approximately C\$1.5B of equity capital

under its management as of May 13, 2014. In 2013, Clairvest Group Inc. (TSX-CVG) and its managed funds invested a combined total of \$15.0M for a 93.7% ownership interest in Cieslok.

Incorporated as Cieslok Media Inc. on July 3, 2004 its assets were acquired by Titan US in December 2004 and thereafter the business was operated for 9 years under the name Titan Outdoor Canada Company. On September 27, 2013, Cieslok acquired 100% of the issued and outstanding shares of Titan Outdoor Canada Company and amalgamated with Titan Outdoor Canada Company to continue as one entity, Cieslok (the proposed assignee). Cieslok has properties in four Canadian markets (Toronto, Edmonton, Vancouver and Montreal). In Toronto, Cieslok owns and operates over 60 sign products some of which are the major digital signs located at Yonge / Dundas Square with a majority of these 60 billboard signs being directly owned by Cieslok. Exhibition Place has been informed that as of the date of this report there are no outstanding City of Toronto sign by-law violations against Cieslok.

Cieslok has indicated that from 2011 to 2012, revenues from the sign assets now owned by Cieslok grew by 14.7%; combined growth of Titan Outdoor Canada Company and Cieslok between 2012 and the end of 2013 was 55%; and the 2014 Q1 results for Cieslok are 30% higher than the Q1 2013 results for the same sign assets. In 2013, digital revenue represents 60% of Cieslok's total revenue.

As of the date of this report, there are no outstanding violations in respect of the Clarity Sign issued by the City of Toronto. However, as reported to the Board at its meeting of July 5, 2013, there is an ongoing dispute between the Board and Clarity with respect to the terms of the Agreement which is permitted under the Agreement and is scheduled to go to arbitration as required under the Agreement in September 2014, if the matter is not settled by the parties before that time.

In addition, Clarity has been levied a tax pursuant to the City of Toronto Municipal Code Chapter 771, Taxation Third Party Sign which to date remains unpaid as Clarity has indicated to the Board that it believes the Sign is entitled to an exemption and intends to dispute the allocation of the sign tax.

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Submitted by:

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