



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Authority to Enter Agreement with Astral Media Outdoor
(Toronto) G.P. Regarding Installation of Concrete Pads**

Date:	September 29 , 2009
To:	Government Management Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report seeks to obtain authority to enter into an attached agreement with Astral Media Outdoor (Toronto) G.P. and Astral Media Inc. (referred to together as “Astral”) in order to resolve a dispute between Astral and the City regarding the installation and maintenance of concrete pads under certain street furniture.

The proposed settlement is a reasonable resolution of this dispute and I recommend it. The General Manager of Transportation Services concurs with the recommendations in this report.

RECOMMENDATIONS

It is recommended by the City Solicitor that:

1. Council adopt the confidential instructions to staff in attachment 1;
2. Council authorize the release of the confidential recommendations and agreement attached thereto, when the agreement is signed by all parties.

DECISION HISTORY

City Council at its meeting of May 23, 24 and 25, 2007 adopted with amendments the report from the Deputy City Manager and Director, Purchasing and Materials Management to Executive Committee Item 8.8 entitled “Coordinated Street Furniture Program – Results of Request for Proposals (RFP) 9103-06-7316”. That agreement has a term of 20 years. Under that agreement, Astral agreed to design, supply, install, maintain, refurbish, relocate and remove street furniture throughout the City. The Street Furniture Agreement grants Astral rights to advertise on street furniture. It also provides that Astral will pay to the City annual fees equal to the greater of a guaranteed minimum annual amount or a percentage of gross revenues. The minimum amount payable by Astral over the 20 years of the contract totals \$400,854,236.00. In addition, Astral paid \$28,000,000.00 on signing the Street Furniture Agreement. Astral is also providing the City with approximately \$99,660,000.00 in added value services, \$300,000,000.00 in maintenance services and \$250,000,000.00 in capital infrastructure costs for the fabrication of the street furniture elements, which will belong to the City upon expiry of the contract. The total value to the City of these payments, services and costs is in excess of one billion dollars.

FINANCIAL IMPACT

The financial impact will be disclosed in the Confidential Attachment.

ISSUE BACKGROUND

The Dispute

A significant number of litter receptacles (and a limited number of other pieces of street furniture) are to be placed in grassy areas pursuant to the Street Furniture Agreement. This in turn requires that concrete pads be placed under those items. Who should bear the cost of those pads is the matter in dispute.

The pads are required for 8,842 items of street furniture, 7,700 of which are litter receptacles.

The Amount in Issue

City staff and Astral estimate the cost of installing the pads in issue, plus any future maintenance or repair, will be no more than \$6,000,000.00.

The pre-existing litter bins (owned by Eco Media) must be removed by the end of December 2009. If this dispute with Astral is not resolved quickly, the City would be put in a position of having to temporarily replace approximately 3,000 Eco Media bins with temporary bins. This cost would be in the range of \$1,200,000.00. It would be a “thrown away cost” in that those temporary bins would ultimately be replaced by permanent ones.

If the dispute is not resolved therefore, the total amount in issue will be approximately \$7,200,000.00 plus legal costs.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Authority to Enter Agreement with Astral Media Outdoor (Toronto) G.P.
regarding Installation of Concrete Pads and Agreement Attached thereto