

## Attachment 3

### Summary of Draft Agreement Provisions

**This schedule contains for the information of Committee and Council a shortened summary of the major terms of the Draft Form of Agreement included with the public Request for Proposals document, which shall form the basis of the final agreement with the Successful Vendor, subject to such amendments as may be approved by City Council and as recommended in Attachment 4 of this report.**

#### **1. DEFINITIONS**

- (a) “Annual City Revenue Share” means the fixed percentage of Gross Revenues payable to the City on an annual basis under the Agreement, calculated by multiplying the fixed percentage payable to the City with the annual Gross Revenues.
- (b) “Caisson” means an enclosed and illuminated or non-illuminated casing, which serves to house printed advertising media on Street Furniture.
- (c) “Cluster” means a related grouping of Street Furniture elements, as identified by the General Manager in his/her sole discretion, installed according to the Placement Guidelines at a street corner or other location on a street.
- (d) “Element” means any item of Street Furniture.
- (e) “Existing Elements” means existing Elements, including Existing Shelters, erected on a City street which, as of the date of the agreement, were owned by the City and operated or maintained by a third party or the City pursuant to a previous Agreement with the City.
- (f) “Existing Shelter” means an existing transit shelter erected on a City street which, as of the date of the agreement, was owned by the City and operated or maintained by the previous Shelter provider or the City pursuant to a previous Agreement with the City, and includes an existing shelter which has been relocated to a new location by the Company pursuant to the agreement.
- (g) “General Manager” means the General Manager of Transportation Services for the City of Toronto.
- (h) “Gross Revenues” means the sum of all amounts billed by the Company and/or due to the Company or paid to the Company in any way derived from the use (i.e. nominal washroom fees) or sale of advertising on the Street Furniture, subject to certain listed exceptions. Gross revenue shall be calculated prior to deducting any fees, commissions, licensing expenses, operating expenses payable by the Company.

- (i) "Guaranteed Minimum Annual Revenue" means the guaranteed minimum annual revenue to be paid by the Company to the City under the terms of the Agreement.
- (j) "Placement Guidelines" means the guidelines for the location and placement of Street Furniture on the Streets as contained in Schedule "B" attached to the Agreement.
- (k) "Street" means a common and public highway, road, drive, laneway, or structure incidental thereto under the jurisdiction of the City of Toronto, and includes all of the area, which may comprise roads, roadways, pavements, sidewalks, boulevards, landscaped space, etc. between the lateral property lines of a Street.
- (l) "Street Furniture" means the elements as identified in Schedule "A", including Caissons and advertising faces, to be installed on Streets under the jurisdiction of the City of Toronto for the convenience of the public:

- (a) Shelters;
- (b) litter/recycling receptacles;
- (c) benches;
- (d) multi-publication structures;
- (e) information/wayfinding structures;
- (f) postering/neighbourhood information/kiosk structures;
- (g) public washrooms; and
- (h) bicycle parking units;

and also includes:

- (i) such other products or services which may be provided by the Company under the terms of the agreement; and
  - (k) for greater certainty, any Third Party Elements which have been assumed by the Company under the agreement.
- (m) "Sustainable/Innovative Technologies" means environmentally friendly technologies such as solar power, reusable or recyclable components, green roofs, water collection or products or services which may contribute to an improved streetscape, environment or access to services.
  - (n) "Term" means the term of the Agreement, being the period commencing on \_\_\_\_\_, 2007 and expiring on \_\_\_\_\_, 2027.
  - (o) "Third Party Elements" means Elements provided to the City by a third party other than the Company.

## **2. SCOPE OF WORK**

- (a) The Company shall design, supply, install, maintain, refurbish, relocate and remove Street Furniture for the City within the geographical area of Toronto, Ontario, as more particularly described in the agreement, at the Company's sole expense and subject to the terms and conditions of the agreement.
- (b) Subject to Section 3, the Company shall have the exclusive right to supply, place and maintain advertising within or on certain Street Furniture at all times during the Term in accordance with the terms and conditions of the Agreement.

**3. INSTALLATION OF STREET FURNITURE**

- (a) During the Term, the Company will, subject to the requirements of the General Manager, roll-out and install in every Agreement Year the following minimum numbers of Street Furniture elements within the geographic boundaries of the City at acceptable locations as determined by the Company and the General Manager under the agreement or in replacement of Existing Elements as follows:

**[Insert Roll Out Schedule]**

- (b) Despite Section 3(a), the City may in the following circumstances require additional Street Furniture elements with or without Caissons on the following terms and conditions:
  - (i) In the event that it hosts the Olympics, a World's Fair or other major large scale event, the City shall have the right, at its sole option, to request that the Company cooperate in implementing modifications to the roll-out schedule in Section 3.1 so as to permit the installation of additional quantities of elements in an earlier Agreement Year at such locations as may be required to accommodate additional demand as a result of such events;
  - (ii) In the event that the City requires that the quantities of Street Furniture elements as set out in Section 3.1 be accelerated so as to provide additional quantities of elements in an earlier Agreement Year and fewer in a later Agreement Year, the Company shall provide such additional elements provided that the City shall give at least 120 days notice of such request; or
  - (iii) Where the City for whatever reason requests that additional Street Furniture elements, over and above the total quantities set out in Section 3.1, be provided by the Company, the Company shall provide such elements, at the unit prices as set out in the Proposal,

within such timeframe as may be agreed.

- (c) Where the Company cannot for whatever reason provide the additional elements as required under paragraphs (i), (ii) and (iii) above, it agrees that the City shall be entitled to obtain, at the Company's sole expense, such additional elements from a third party (the "Third Party Elements") and that the Company shall co-operate with the City and the third party in ensuring that any required design or manufacturing specifications are made available for use by the third party solely for the purposes of producing and supplying Third Party Elements for the City which satisfy the requirements of the agreement. The parties agree that the Third Party Elements shall, once installed, be assumed by the Company and treated as Street Furniture subject to the terms and conditions of the agreement.
- (d) The Company agrees that in the event that the Company fails to supply the specified quantities of Street Furniture elements as set out in Section 3(a), that the City shall, in addition to its other remedies under the agreement, have the right, at its sole option, to require that the Company substitute other Street Furniture elements in place of those which the Company failed to supply.
- (e) In the event that that the Company has, as of a date which is thirty (30) days prior to the last day of Agreement Years 10 or 20, failed to supply the specified quantities of Street Furniture Elements as set out in Section 3(a), that the City shall, in addition to its other remedies under the agreement, have the right, at its sole option to require that the Company pay the following amounts in lieu of supplying any remaining required Elements which were not supplied in Agreement Years 1 to 10 or Years 11 to 20, as set out below:

**[Insert table setting out specified unit values for various elements in Years 10 and 20]**

#### **4. STREET FURNITURE DESIGN**

- (a) Unless otherwise required or approved by the General Manager, all Street Furniture shall be constructed and installed by the Company, at its sole expense, in accordance with the Proposal to meet or exceed the specifications attached as Schedule "A" to the agreement. **[Schedule to be attached as per accepted Proposal]**
- (b) The Company and the City agree that the City, at its sole option, shall have the right in Agreement Year Ten (10) of the Term to require that the Company submit a proposal, at its sole expense, to modernize, retrofit or upgrade the Street Furniture

design and specifications as set out in Schedule “A” and the City shall have the right to consider and reject or accept the Company’s proposal.

- (c) The General Manager may require a change in the size, dimensions or positioning of any piece of Street Furniture or a Caisson to be located in a particular location, if necessary, to ensure pedestrian and/or vehicular safety.
- (d) The City may reject the proposed locations of Caissons in any instance and for any reason.
- (e) The General Manager may approve Street Furniture of special design to be installed at any particular location requested by the Company and complying with Schedule “B”.
- (f) The Company agrees that the City may require the Company to undertake programs for the exploration and implementation of new street furniture opportunities, with or without advertising, at fair market value to the City, provided that where such programs cannot be provided by the Company at fair market value, the City shall be entitled to undertake such programs with a third party.
- (g) The Company agrees that it shall throughout the Term continue to explore the use of Sustainable/Innovative Technologies in the development and design of the Street Furniture, including where requested by the City to do so, and shall be prepared to make proposals for the use of such technologies for the consideration of the City.
- (h) Street Furniture not meeting the specifications provided in Schedule “A” shall not be installed by the Company except with the prior approval of the General Manager.
- (i) The Company agrees, where required by the General Manager, to install and maintain, at its sole expense, concrete pads satisfactory to the General Manager as a base for New Street Furniture Elements erected pursuant to the agreement and to obtain all necessary approvals and permits required to do so.
- (j) The Company shall, at its sole expense, produce and install TTC route maps in each New Shelter as required under Schedule “A”.
- (k) The City and the Company acknowledge and agree that all ownership and copyright entitlement to all design specifications provided by the Company as contained in Schedule “A” (the “Toronto Designs”) is vested in the name of the Company. The City undertakes not to use or suffer or permit any use, for any purpose, during the Term of the agreement of the “Toronto Designs” except as permitted herein or to the extent they are within the public domain or received from the City independently of the agreement. The City further acknowledges and agrees

that the names, logos and marks utilized by the Company and any variation thereof, are the exclusive property of the Company. Accordingly, the City shall not distribute any materials, documents, advertising literature, items, souvenirs, novelties, or other things which incorporate such logos and/or marks without the prior written consent of the Company, which may be unreasonably or arbitrarily withheld or delayed. Despite the foregoing, the Company hereby grants to the City a non-exclusive, perpetual, irrevocable, paid-up, royalty free license geographically limited to the boundaries of the City of Toronto, as amended from time to time, to use the Toronto Designs provided by the Company under the agreement, for the purposes of the construction by, or for, the City, during the Term as permitted under the agreement, or after the date of expiry or termination of the agreement, of Street Furniture and Caissons of similar or identical design or appearance. For greater certainty, this shall include the ability of the City to exercise such rights where required in order to remedy a breach of the agreement as provided for in the agreement. The Company shall also provide waivers of any or all moral rights of the Company or any Person arising under the **Copyright Act** regarding the Toronto Designs against the City and anyone claiming rights of any such nature from or through the City.

- (l) The Company hereby represents and agrees that that it is capable of transferring such rights and granting permission to the City to use the Toronto Designs as required under the terms of the agreement and that the Company shall cause all Persons who may have an interest in the Toronto Designs to execute such documents as may be required to satisfy the requirements of the this paragraph.
- (m) For greater certainty, the Company agrees that the City shall be entitled to use the same or similar designs of Street Furniture for the installation of elements on other types of City property, such as parks at any time during or after the end of the Term.
- (n) During the term of the agreement, the Company shall obtain the prior written consent of the City, which may be unreasonably or arbitrarily withheld, prior to fabricating or supplying Street Furniture Elements using the Toronto Designs for any other reason or purposes other than for the installation of Elements in the City of Toronto for the City under the terms of the Agreement.
- (o) The Company shall, upon execution of the agreement, make a payment to the City by certified cheque in the amount of \$100,000.00 to fund a design study to be undertaken by the City for the purpose of recommending complementary design solutions for bollards, pedestrian railings, tree grates, maintenance covers, sidewalk subway entrance portals and other street amenities which might be undertaken by the City or a third party for the purpose of complementing and enhancing the Street Furniture designs as set out in Schedule “A” to the agreement. For greater certainty, the Company hereby agrees that the designs contained in Schedule “A” may be used by the City or a third party retained by the City for the purposes of

producing the study as described in this paragraph.

**5. SITE SELECTION/RELOCATION**

- (a) The site selection for the deployment of any new Street Furniture, with or without Caissons, under Section 3(a) shall be determined in accordance with the Placement Guidelines as contained in Schedule “B” to the Agreement, subject to the final approval of the General Manager. Street Furniture proposed for locations not meeting the specifications provided in Schedule “B” shall not be installed by the Company, except with the prior approval of the General Manager.
- (b) The City agrees to allow the Company to place New Shelters with or without Caissons at locations that already have an Existing Shelter, provided that such locations comply with the Placement Guidelines and any Existing Shelters removed by the Company that are, in the opinion of the General Manager, in satisfactory condition will be reinstalled, at no cost to the City, at new locations as requested by the General Manager.
- (c) The Company agrees that the City may request that Elements with or without Caissons be placed at locations that already have an Element and require that the Company, at its sole expense, relocate any existing Element to another location as approved by the General Manager.
- (d) The Company shall cease construction and/or remove or relocate, at its sole expense, any Street Furniture or Caisson from the Street within seven (7) days of the receipt of notice from the General Manager to do so for any reasonable municipal purpose or concern whatsoever, including, but not limited to:

  - (i) A failure to comply with Construction Requirements;
  - (ii) Public health, safety or security concerns;
  - (iii) Special events;
  - (iv) Required fleet or equipment/Street Furniture maintenance or substitution;
  - (v) Faulty fabrication;
  - (vi) To enable construction, maintenance or repairs to the Street or public utilities; and
  - (vii) Chronic abuse of the Street Furniture.

- (e) The Company shall, at its sole expense, restore the Street at the site of any Street Furniture Element which has been removed or relocated to the satisfaction of the General Manager, including the removing any footings or foundations or other supports or fastenings as directed and restoring the Street surface to the same condition as the surrounding area.
- (f) The Company not be entitled to any compensation from the City for any loss or damage whatsoever, including loss of advertising revenue, as a result of any required removal or relocation of Street Furniture.
- (g) The Company shall not remove or relocate any Element prior to the termination of the Agreement without the prior approval of the General Manager.
- (h) The City may, in the event that the Company fails to respond to a notice given under Section 7(b), at the Company's sole expense and without compensation, remove any Element which requires emergency maintenance under Article 7, provided that it shall notify the Company as soon as practicable thereafter of such action.

**6. ELECTRICAL POWER**

The Company agrees that it shall work with the appropriate hydro authorities to supply and connect underground electrical power, where required, to all Street Furniture.

**7. MAINTENANCE**

- (a) The Company shall maintain all Street Furniture, at its sole expense and to the satisfaction of the General Manager, in good and proper repair whether modified or left unmodified by the Company, and irrespective of the date of installation in accordance with the following provisions:
  - (i) The Company shall submit a periodic maintenance schedule, satisfactory to the General Manager during the Term outlining the anticipated maintenance work to take place during the maintenance period.
  - (ii) The Company shall clean and wash each Element inside and out as appropriate, and promptly remove all graffiti, stickers, posters, garbage, litter, weeds and grasses inside, outside and on top of each Element, at least once a week, or more frequently if required by the General Manager pursuant to clause 7(b), to keep



each Element free of any noticeable accumulation of dirt, dust, marks, stickers, posters, litter, weeds, snow or ice.

- (iii) The Company shall clean any accumulation of snow or ice from inside or around all Elements within twenty-four (24) hours after a storm with an accumulation of at least 5 centimetres of snow or ice.
- (iv) The Company shall inspect each Element at least once a week for any damaged or broken components or burned-out lighting fixtures, and shall repair or replace any damaged or broken parts within twenty-four (24) hours of the Company becoming aware of the occurrence of the damage, breakage or burn-out.
- (b) The General Manager may request cleaning or maintenance at specific locations in response to site specific concerns, in which case the Company shall carry out such cleaning within forty-eight (48) hours. The General Manager may also provide notification to the Company that an Element requires emergency maintenance if its condition is such that it is a serious danger to the public. The Company shall, as soon as reasonably possible, and in any event no later than twenty-four (24) hours after the giving of such emergency notice, repair, maintain or make safe the Element, at its sole expense and to the satisfaction of the General Manager. The Company shall provide the City at all times during the Term of the Agreement with up-to-date contact information for such emergency maintenance.
- (c) The Company agrees that it shall post a readily visible notice in or on each Element indicating that the Company is responsible for the maintenance and cleaning of the Element and providing a current and operative telephone number that is TTY capable and an e-mail address to be used by the public to report any Element which requires cleaning or maintenance, and the Company shall immediately respond to such complaints within twenty-four (24) hours.
- (d) The Company shall, at its own expense, be responsible for the repair of damage to any Element when such damage is caused by an act of Vandalism.
- (e) The Company shall comply with all construction requirements when maintaining Street Furniture on City roadways, including parking and traffic regulations.
- (f) The City, or persons authorized by the City, shall have the right, at all reasonable times, to inspect or otherwise review the work performed or being performed by the Company or its agents in respect of the Street

Furniture.

**8. SPECIFIC OPERATION/MAINTENANCE CONCERNS**

- (a) Information/Wayfinding Structures:** The Company shall replace faded maps and up-date map information every two (2) years or earlier as required by the City.
- (b) Public Washrooms:** The Company shall ensure that:
  - (i)** All public washrooms are open to the public on a 24/7 basis, less the time required for service and maintenance activities;
  - (ii)** All public washrooms provide a comfortable interior temperature, proper ventilation and adequate illumination at all times when the washrooms are in operation;
  - (iii)** All public washrooms are inspected and cleaned on a daily basis to ensure that all systems are functioning properly, that the units are clean and that soap and towel dispensers are fully stocked and
  - (iv)** The Company provides an immediate response to any signal from an automated public washroom's self-activating maintenance and operation warning systems.

**[Insert additional requirements as per Proposal]**

**9. VANDALISM**

In the event that an Element at any specific location has been subjected to repeated damage due to vandalism, the Company may make a request to the General Manager to remove or relocate the Element, at the Company's sole expense, to an alternative location, provided that the General Manager shall have the right to deny any such request to remove or relocate the Element.

**10. ADVERTISING PLACEMENT AND STANDARDS**

- (a)** The design, size or scale of the Street Furniture as set out in Schedule "A" may not be modified or enlarged by the Company for the purposes of accommodating advertising.
- (b)** All advertising on Caissons in or on Street Furniture shall be in accordance with the regulations and standards set by the Advertising

Standards Council of Canada, in accordance with good taste, and shall not include any content, including and not limited to tobacco products, which is prohibited or restricted by the policies of City Council or Applicable Law. In addition, the Company shall not permit the placing of any advertising which is, in the opinion of the General Manager, acting reasonably not in good character and appearance, vulgar or indecent, or offensive to the public on religious, racial or other grounds. The Company shall identify and submit ads which in its opinion may be problematic, for approval to a panel of three (3) members of the Council of the City who sit on the Public Works and Infrastructure Committee, including the Chair of the Committee.

- (c) Any advertising located near schools or places of worship shall exhibit content appropriate for such locations.
- (d) Where the City makes a request to the Company to remove any prohibited or offensive advertising, the Company shall, at its sole expense, immediately remove the advertisement and hereby releases and indemnifies the City with respect to any claim, loss or damage arising as a result of such removal.
- (e) The Company shall at all times provide, in accordance with the requirements of Schedules “A” and “B”, make a Primary Advertising Format and a Secondary Advertising Format available for advertising by local businesses.
- (f) The Company shall ensure that all advertising is constructed and placed in accordance with the principles included in the Placement Guidelines attached as Schedule “B” to the Agreement, including the following:
  - (i) No more than one advertising Element shall be deployed at a given location or Cluster of Street Furniture;
  - (ii) The Company shall at all times comply with the minimum separation distances between Elements with Caissons and shall not install more than one advertising Element per city block; and
  - (iii) The Company shall not, under any circumstances, place or permit the placing of advertising on benches or any stand-alone Street Furniture Elements.

## **11. PUBLIC SERVICE ADVERTISING**

- (a) The Company shall, at all times, provide seven percent (7%) of the total number of Advertising Faces free of charge to the City for the display of public service promotional material. In addition, each business

improvement area (“BIA”) within the City of Toronto is entitled to receive one free Advertising Face (Primary Advertising Format) for promotion purposes on a Street Furniture Element within the BIA boundaries. All Advertising Faces provided under this paragraph shall be subject to the same specifications and criteria as may be imposed on the Company’s advertisers. In the event that the Company has the opportunity to sell advertising space that would otherwise be part of the City’s allocation or provided to a BIA under this Section, it shall first obtain confirmation from the City that such space is not required for public service purposes.

- (b) The Company shall be responsible for the installation and removal, at its expense, of such public service promotional material as may be provided by the City or a BIA, and will, as expeditiously as possible, remove any public service messages or BIA advertising which becomes obsolete. The General Manager reserves the right to require that the Company install a time-sensitive public service message within five (5) working days of receiving notice from the City that installation is required.
- (c) Free advertising space made available to the City under this Article shall be distributed equally on all types of available advertising formats on a City-wide evenly spaced geographic basis and, in the event that more than seven percent (7%) of the available Caissons have not been sold, such additional space shall be made available to the City.

**12. INDEMNIFICATION AND INSURANCE**

- (a) The Company shall provide the City with a full indemnity under the Agreement.
- (b) The Company shall purchase and maintain in force, at its own expense (including the payment of all deductibles) for the duration of the Agreement, appropriate policies of insurance.

**13. WORKPLACE SAFETY AND INSURANCE BOARD**

The Company agrees that it shall, at its own expense, procure and carry or cause to be procured and carried and paid for, full Workplace Safety and Insurance Board coverage for itself and all workers, employees, servants and others engaged in or upon any work. The Company will be required, during the Term, to annually furnish the City with a Workers' Insurance and Safety Board Certificate of Clearance or such other proof of coverage as may be acceptable to the City.

**14. ENCUMBRANCE OF TITLE**

The Company agrees that the Agreement does not create or provide it with any interest in the Streets other than a mere licence and that no person shall be entitled to register or claim an interest of any kind against the Streets. The Company shall discharge any lien for work, labour, services or materials supplied to or for the Company within ten (10) days after receipt of notice thereof procure and register the discharge thereof, including any certificate of action registered in respect of any lien, by payment or in such other manner as may be required or permitted by law.

- (a) The City and the Company agree that any work done in the Streets during the term of the Agreement by or on behalf of The Company shall not be done and shall be deemed not to have been done at the request of the City. If any Vendor with respect to any work done by or on behalf of the Company gives notice to the City pursuant to Article 20 of the *Construction Lien Act* (Ontario), the City shall have the right to refuse to assume responsibility.
- (b) Should the Company be unable to perform its duties under the Agreement or become insolvent, bankrupt or make an assignment or compromise to its creditors, or encumber all or any portion of the Street Furniture erected under the Agreement by way of security, lien, or otherwise, such action or occurrence shall be deemed to be a contravention of the Agreement.

## **15. PERFORMANCE SECURITY**

- (a) As security for the performance of its financial obligation under the Agreements, including its obligations to pay fees, the Company agrees to provide upon execution of the Agreement, an unconditional and irrevocable Letter of Credit in the amount of Sixteen Million Dollars (\$16,000,000.00) of lawful money of Canada, to be reduced commencing in Agreement Year 11 on an annual basis as agreed. The Letter of Credit shall be automatically renewed on an annual basis at the start of each Agreement Year and shall be held by the City for the Term of the Agreement and up to one (1) year thereafter. The Company shall maintain said Letter of Credit in force for the duration of the Agreement. Where the City exercises its right under the Agreement to draw down on the Letter of Credit in any Agreement Year, the Letter of Credit to be provided for the next Agreement Year shall be provided in the total amount for the Agreement Year as required under this Article 15, without deduction for the amount of any previous draw by the City.

## **16. TAXES AND COMPENSATION**

- (a) The Company shall, in addition to the fees payable under this Article 16, be

solely responsible for the payment of all taxes, rates, duties, levies, fees, charges, sewer levies, local improvement rates, and assessments whatsoever, such taxes, rates, duties, levies, fees, charges, sewer levies, local improvement rates, and assessments imposed, assessed, levied or charged now or in the future by any regional, provincial, federal, parliamentary or other governmental body, or by the City where legally required by such bodies to do so, in connection with the occupation and use of the Street Furniture by the Company.

- (b) The Company will pay the City an annual licence fee for each Agreement Year listed in Column One below equal to THE GREATER OF the Guaranteed Minimum Annual Revenue amount listed in Column Two or the percentage in Column Three of the Gross Revenues for the Agreement Year:

Agreement Year	Minimum Guaranteed Annual Revenue	Percentage of Gross Annual Advertising Revenue Payable to the City <u>(*Not to be less than 10% in Years 1-10 and 20% in Years 11-20)</u>
1	\$ _____	_____ %
2	\$ _____	_____ %
3	\$ _____	_____ %
4	\$ _____	_____ %
5	\$ _____	_____ %
6	\$ _____	_____ %
7	\$ _____	_____ %
8	\$ _____	_____ %
9	\$ _____	_____ %
10	\$ _____	_____ %
11	\$ _____	_____ %
12	\$ _____	_____ %
13	\$ _____	_____ %
14	\$ _____	_____ %
15	\$ _____	_____ %
16	\$ _____	_____ %
17	\$ _____	_____ %
18	\$ _____	_____ %
19	\$ _____	_____ %
20	\$ _____	_____ %
	6	

- (c) On the date of execution of the Agreement, the Company shall pay to the City:

- (i) all third party consulting costs incurred by the City with respect to the preparation of this Program in the amount of \$285,000.00;
  - (ii) an up-front lump sum payment in the amount of \$\_\_\_\_\_;  
and
  - (iii) the Minimum Guaranteed Annual Revenue amount in Column Two above for Agreement Year One.
- (d) On the first day of each Agreement Year after Agreement Year One, the Company shall pay the City the Minimum Guaranteed Annual Revenue amount in Column Two above as a pre-payment in respect of the Annual City Revenue Share payable for that Agreement Year.
- (e) The Company shall, within ten (10) days after the last day of each calendar month during an Agreement Year, provide the City with a monthly Gross Revenues report and shall remit to the City any adjustments where the Annual City Revenue Share payable to the City is then in excess of the Minimum Guaranteed Annual Revenue amount for that Agreement Year.
- (f) The Company shall provide, no later than ten (30) days after the last day of the Agreement Year (including the last day of the Term), an audited accounting statement in a form and detail satisfactory to the City, acting reasonably, certified by an independent chartered accountant to be in accordance with generally accepted accounting principles, showing the calculation of the Gross Revenues and Annual City Revenue Share for that Agreement Year and any adjustments which may be necessary. Penalty for late payment shall be the City's then current interest rate on overdue accounts as of the payment due date, compounded monthly.
- (g) The Company shall establish and maintain, at a location within the City of Toronto, books of account and records of all transactions relating to the Street Furniture and Caissons, including for advertising purposes, in accordance with generally accepted accounting practices. If desired by the City, it may conduct a complete audit of the Company's records related to the calculation of the Gross Revenues, provided that the City shall not require an audit more than once in an Agreement Year. The first audit requested by the City shall be performed at the Company's expense, provided that any subsequent audit may be at the expense of the City in the event that it results in a discrepancy in the calculation of Gross Revenues of less than five percent (5%) of the Gross Revenues.

**17. REMEDY FOR BREACH**

- (a) Notwithstanding anything in the Agreement, in the case of default, breach or non-observance made or suffered by the Company at any time or times in respect of any of the covenants, obligations or Agreements contained herein on the part of the Company, then, provided such default, breach or non-observance is not cured within the time provided in Section 17(b), the City may terminate the Agreement by giving the Company written notice thereof and after the delivery of such written notice, which may be given by facsimile transmission, the Agreement shall be terminated and ended. Where the breach is not a breach of a covenant to pay money and is of a nature that, with reasonable resources and diligence, would require more than five (5) calendar days to remedy, then the Company will not be in default if it, immediately after receiving notice of the breach, embarks on a diligent and continuous course of remedial action satisfactory of the General Manager to expeditiously cure the breach.
- (b) In the case of an unsafe or emergency situation, a default shall be remedied within four (4) hours of receipt of notice from the City. In case of undue delay by the Company, in effecting the remedy of any default, the City may, without prejudice to any other rights which it may have with respect to such default, remedy such default, and all costs incurred with such work plus an overhead equal to fifteen (15%) percent of such costs shall immediately become due from the Company.
- (c) The City's interest in the Street Furniture created by the Agreement shall rank in priority to all other security interests in the Street Furniture and any other interest granted by the Company shall be subordinate to the interest granted herein. To ensure that these requirements are met, the Company shall not grant security interests or otherwise encumber any of the Street Furniture without the City's prior written consent. The Company agrees that it shall not purport to grant security interests or otherwise encumber the Streets.
- (d) The Company further agrees that if it becomes insolvent, bankrupt, or makes an assignment or compromise with its creditors and is unable to perform its duties under the Agreement, the City may, in addition to and without prejudice to its other lawful rights and remedies, forthwith terminate the Agreement by written notice.
- (e) Notwithstanding any termination of the Agreement, the Company shall remain liable to the City for any default hereunder by the Company occurring during the Term.

## **18. TERMINATION/EXPIRY OF AGREEMENT**

- (a) In the event of termination or expiry of the Agreement for any reason in accordance with its terms, the City may seek damages and, in addition to any other remedies it may have, at its option, choose to take all right, title and interest in the Street Furniture and Caissons.



- (b) In the event of termination, the City shall have the right to draw on the letter of credit to satisfy any outstanding obligations of the Company under the Agreement.

**19. DISPUTE RESOLUTION**

- (a) Any controversy, claim or dispute (a “Dispute”) arising out of or relating to the Agreement between the parties concerning any matter pertaining to the Agreement which the parties are unable to resolve using reasonable commercial efforts within thirty (30) days following the written notice by one party to the other(s) that such Dispute be resolved, may be submitted by a party to a dispute resolution process as set out in the Agreement. Despite the foregoing, any dispute arising between the City and the Company in respect of any question of law pertaining to any aspect of the Agreement, other than a question of the interpretation of the Agreement, shall not be submitted to arbitration. Despite the foregoing, in the event that the City is required, due the impending reduction or expiry of a letter of credit required under the Agreement, to draw down on the letter of credit in order to preserve its rights prior to the resolution of a Dispute, it shall be entitled to do so.
- (b) Notwithstanding the foregoing, if the decision of the arbitrator is to make an award of greater than One Hundred Thousand Dollars (\$100,000) or to decline to make an award with respect to a liquidated sum greater than One Hundred Thousand Dollars (\$100,000) or with the exception of errors in law, the decision of the arbitrator may be appealed by the parties to the arbitration in accordance with the appeal provisions of the Act. Any decision may also be appealed on a question of law.

**20. CONFIDENTIALITY**

The Agreement is not subject to any covenant of confidentiality and that it may be disclosed by either party to a person not a party to the Agreement without the requirement for consent.

**21. ASSIGNMENT**

- (a) The Company shall not undertake an Assignment of the obligations, duties, responsibilities, rights and privileges contained in the Agreement, including to an Affiliate or Joint Venturer, without obtaining the prior written consent of the Council of the City.
- (b) No Assignment pursuant to Section 21(a) shall take effect until the assignee to which the consent of the City is given shall have entered into an assignment Agreement directly with the City in a form satisfactory to the City Solicitor whereby, among other things, the assignee covenants with the City to perform, observe and keep each and every covenant, proviso, condition and Agreement in the Agreement on the part of the Company to be performed, observed and kept.

**22. OTHER COMMERCIAL TERMS**

The Agreement will contain other commercial terms, including force majeure, manner of notice, waiver provisions, interpretation, etc.